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TO

THE REVENUE REGISTER.

VOL. IV.

1870.

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THE

MADRAS REVENUE REGISTER.

No. 1.] MADRAS:—SATURDAY, JANUARY 15, 1870. [Vol. IV.

GRÂM-NATTAM.

There are probably fewer things which give a Revenue Officer more trouble than a disputed village site or grâm-nattam. Owing to the unsettled state of the law on the subject, or rather owing to the absence of any law regulating the enjoyment of such land, we find that Divisional Officers have each their individual crotchets regarding the question, and in one district it may happen that each independent officer acts in regard to such lands in a different manner. The result is that many suits are filed in the Civil Courts, a feeling of insecurity is raised amongst the village ryots, and but too often the richer inhabitants of the village contrive to monopolize the greater part of the land set apart for building purposes to the exclusion of the poorer villagers. We now propose to show the importance which is attached to this question, and to offer some suggestions regarding the changes we wish to see established.

The most memorable of any of the numerous disputes which have arisen regarding grâm-nattam are those which gave rise to the disturbances in South Arcot in 1840-41, during the Collectorship of Mr. Ashton. This gentleman issued an order in which Tahsildars were directed to levy tax on all village nattam lands not specially exempted in the Pymash accounts, whether occupied for houses or for backyards. The publication of this order excited great dissatisfaction amongst the ryots who were assembled for the jummahbundy. In Trikalore and Trinomally Taluks the ryots refused to accept their puttahs, and it was only by summary punishment that the Village Monigars were induced to take the puttahs for distribution to the ryots. In Chetput Taluk, (then part of South Arcot,) the disturbance reached its culminating point; not only did the ryots refuse to accept their puttahs, but the Monigars and Curnums refused to do so also. Mr. Ashton's authority was publicly defied, and he was interrupted in his jummahbundy cutcherry by a crowd which pelted him with sand, and compelled him to beat an ignominious retreat to an Indigo factory. Mr. Ashton appears to have been panic-struck, and cancelled the obnoxious order; but finding that even this concession failed to reduce the ryots to a peaceful attitude, he threw up his cards and expressed to Government his inability to restore the district to order. Mr. Dent was then sent to South Arcot as a Special Commissioner in order to pacify the cultivators, which he only succeeded in doing by the publication of the following order:—

PROCLAMATION.

The nattam or land set apart for the sites of villages has been exempt from tax from time im-

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memorial, and such exemption is recognized in the Pymash accounts of this district, whether occupied by the sites of houses or backyards attached to such houses, the extent of land occupied by each individual being restricted. In conformity with the above understanding, and with a view to satisfy any doubt which may have existed, it is hereby published for general information that portions of nattam occupied by houses and backyards shall be exempt from all tax whatever, although the said backyards, as is usual, may be cultivated with tobacco and vegetable for the use of the occupants. And although it is not the wish of Government that cultivation should be carried on to any extent in the nattam, still as it is the practice in many villages to cultivate portions of nattam besides the spots occupied as backyards, all such cultivation shall continue to be charged according to the provisions of the Hookamnamah with the highest rate of Poonjah teerwah of the village. In some villages, either from insufficiency of nattam or other causes, ryots have erected houses and enclosed backyards in teerwaput land without the permission of the Sircar. Ground so occupied is clearly liable to the survey assessment fixed on such land; but as the imposition of the tax now may press hardly upon some individuals, the tax upon such houses and backyards as are actually now in existence will be remitted, provided the extent of such backyards is not greater than that allowed by the scale for granting manimaup sanctioned by the Board of Revenue and Government in Fusly 1243, but no teerwaput land hereafter taken for buildings or backyards without the permission of the Sircar will, on any account, be exempt.

All tax levied on houses and backyards in Fusly 1250, contrary to the rules above recited, will be remitted and struck out of the account.

(Signed) J. DENT,
Commissioner.

From the above order, which we have given *verbatim*, three things will be apparent;—first, that all nattam lands, whether occupied by houses or backyards, are exempt from assessment, provided that the extent to which each individual is restricted was not exceeded; second, if that extent were exceeded and land intended for building was improperly used for cultivation, the Revenue authorities had no power to deprive the parties of possession, but could only levy a high rate of tax; third, that assessed lands which up to date of the order had been converted into building sites should in future be exempt from the tax leviable on the land. In order to be able to judge of the effects of this order, it will be advisable to discuss the meaning which we understand to be conveyed by the term "nattam lands." These lands are lands set apart and exempted from assessment in order to provide the cultivators of Government lands with sites for building villages. It appears to us that each ryot is equally entitled to a site for building his house, and, supposing that there is no available nattam land, it is the duty of the Revenue authorities to provide him a site free of expense. In conceding this right, however, we cannot avoid using the argument in an inverse way, and urging that the land thus set apart is set apart for building only, and that when cultivated the ryot requiring a site has a stronger claim to the nattam improperly cultivated by another than to assessed land lying outside the nattam. At present the disputes arising from improper possession of nattam land are endless. Land reserved for village sites is used indiscriminately for cultivation, for cattle-sheds, for storing rubbish and refuse, &c. Wealthy ryots obtain possession, by sale or by transfer, of a large proportion of the village houses or sites. The Revenue Officer is powerless to disturb the possession. A poor ryot claims land for building a house, and founds his claim upon the fact of possessing no site for the purpose, or else of having in former times owned the site either himself or through his ancestors. The claimants have to be referred to a Civil Court, although it is apparent that the claim is one which the Divisional Revenue Officer ought to be empowered to decide. We are of opinion that all disputes regarding nattam lands should be expressly removed from the jurisdiction of Civil Courts, and that the Revenue authorities should be empowered by

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law to decide them equally as they are empowered to decide suits regarding the offices and claims of village servants. The very name of gárm-nattam implies the object for which the land is intended, namely, for the erection of a village. As long as the land is employed in that object, the villagers should be undisturbed; but as soon as the land is misemployed by the conversion into cultivation of what is intended merely for building, so soon we think should the occupier lose all right to the possession of the land from which the Revenue authorities should be empowered to summarily eject him. We have heard it proposed to impose an extraordinary tax on all nattam lands misemployed for cultivation, and so, in fact, to prohibit their use for any other purpose but for that of building. We do not, however, think that this would be sufficient. We would urge that it be distinctly laid down that the right of Government in all nattam lands is paramount, and that those lands can be resumed by the Government as soon as they are misapplied in such way as the Government pleases. To impose a prohibitory tax would no doubt have the effect of restricting the cultivation of village sites, but it would be doing it on a different principle, and would be recognizing the right of the villager to do what he likes with nattam lands, provided only he pays the extraordinary assessment. The short account we have given of the South Arcot riots shows the importance attached by villagers to their grâm-nattam lands, and we do not doubt that the reforms we propose would at first meet with considerable opposition. It must, however, be remembered that the order of Mr. Ashton above alluded to was calculated to benefit Government only, whereas the reform we advocate is to benefit the people themselves. The opposition it would meet with would probably come from the more wealthy and influential ryots, whose object it is to monopolize as much of the village site as they can, and thereby to exclude from enjoyment of the cultivable land attached to the village as many rivals as possible. Under the present state of things it is possible for a wealthy ryot to own the entire space of ground allotted for village site if it so happen that he can induce his fellow-villagers to alienate the sites or houses in their possession by sale, gift, or transfer. That this state of things exists in many villages is an undoubted fact. One family often raises itself above the other ryots, and becomes the virtual possessor of the whole site. It is apparent that this is a state of things which is entirely opposed to what ought to exist, and it is a state of things in our opinion which we believe has to a certain degree been brought about by the proclamation of Mr. Dent, above quoted. This proclamation, by merely penalizing cultivated nattam lands by the imposition of the highest poonjah assessment, in reality affords no check to the misapplication of village sites. We are not aware that this tax is generally levied, and, even if it were, it is so small, that the penalty would be of no avail. We would wish to see it clearly laid down that whoever may be the temporary occupier, the possession of the land still remains vested in the Government. The occupier should merely be allowed to hold the land upon trust. At present this possession is a rock upon which many Revenue Officers split. Grâm-nattam lands, even if left vacant, are generally used in some way or another, either for the deposit of sweepings or for cattle-sheds. If a ryot lays claim to any of such vacant land, his claim is met by an opposing one, namely, that of the possession of the villager who places his sweepings or ties up his cattle on the ground. Many officers do in fact treat this as an actual possession, and refuse to give the land to the applicant who requires it for building purposes; others again, and, we think, rightly, consider such

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a use of the land to constitute no possession, and order the land to be given to the applicant who requires it for the purpose for which it was intended. In cases of this kind, however, the Revenue Officer's order is generally reversed by the Civil Courts, which regard this as a *bonâ fide* possession. The right of Government to nattam lands becomes, therefore, in truth no right at all, and the misapplication of the land of the stronger or more wealthy ryot becomes a constant means of oppression to the poorer and weaker villager. What we advocate, in the interests of the country at large, is that the practice should be uniform, and should be of such a nature as to protect the absolute right of Government to dispose of grâm-nattam lands for building purposes only.

CORRESPONDENCE.

To the Editor of the Madras Revenue Register.

SIR,

I have just become a subscriber to the *Madras Jurist* and *Revenue Register*, and request your assistance in a difficulty which occurred to me in reading the report of the case before the Privy Council in the *Revenue Register* of 15th September 1869, the Neikarapatu Agraharam tenure.

The plea of the defendant of "no jurisdiction" has been overruled by the Lords Justices on the ground that the agraharam was not one conferred by the Governor in Council, and that, therefore, the case was not one contemplated by Regulation IV of 1831, and that it was consequently within the jurisdiction of the Civil Court.

But I find that the provisions of Regulation IV of 1831 were extended to the case of similar grants which, having been made by any Native Government, have been confirmed or continued by the British Government by Regulation XXXI of 1836.

It would appear that the Neikarapatu Agraharam was such a native grant, and, being such, that the jurisdiction of the Civil Court was barred.

Hoping to see the explanation of this in the columns of the next *Register*,

I am, Sir,
Yours faithfully,
M. C. S.

OOTACAMUND, 29*th October* 1869.

We must apologize for not having attended to this letter earlier. It got misplaced among our papers, and was thus lost sight of. As to the enquiry of our correspondent, we have reason to think that Counsel unaccountably failed to urge the point in Privy Council.—ED. R. R.

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND INNES, J.

Landlord and Tenant—Puttah—Right of occupancy—Alienation.

A muttadar brought a suit for the recovery of his land from the mortgagee of his tenant, alleging that his tenant had no alienable interest in it. The Civil Judge found that the tenant was a puttadar, and had, as such, a right to alienate it.

HELD *(confirming the decision of the Civil Judge) that the tenancy of an ordinary puttadar, when properly created, entitles the tenant to the right of occupancy for the purpose of cultivation until default of payment of rent, and that it may be determined upon such default under Section* 41 *of Act. VIII of* 1865, *or at any time of the landlord's acceptance of a surrender by the tenant in writing under Section* 12; *that such right is assignable as a mortgage security, or otherwise, like any other interest in land, when there is no express agreement between the landlord and tenant to the contrary; that the assignee can claim no other rights than those possessed by the tenant; that he cannot throw the burden of the mortgage debt upon the landlord, his only security being the title and interest of the tenant; and that on the legal determination of the tenancy, he should look to the tenant for payment of what may be due.*

S. A. 126 *of* 1869.

Vencataramier *v.* Anautha Chetty and another.

THIS suit was brought by the plaintiff to recover certain land attached by second defendant in execution of a judgment-debt payable by first defendant. Plaintiff stated that 9 years ago first defendant leased the property, agreeing to surrender it on demand, and further that in Fusly 1274 first defendant relinquished the property as being unable to cultivate it. First defendant was *ex parte*. The second defendant pleaded that first defendant, who enjoyed the property under a puttah, had a proprietary alienable right; and that, even if the relinquishment did actually take place as alleged by the plaintiff, it was one subsequent to the mortgage, on which the second defendant's decree was passed. The District Munsiff of Tripatur decreed for plaintiff on the ground that the first defendant's tenancy was one at will, and the second defendant's mortgage was invalid. The Civil Judge in appeal found that the first defendant was not a mere common tenant but a puttadar, and, as such, he was competent to mortgage his

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land. He was of opinion also that his (first defendant's) subsequent relinquishment was a fraud upon the mortgagee; that no actual surrender took place; but that, if the plaintiff desired to take possession on the ground that the first defendant ceased to hold the land, he could only do so subject to the mortgage interest which the first defendant created, that is, by paying off the second defendant's mortgage. The plaintiff presented a special appeal to the High Court, who delivered the following

Judgment:—6th December 1869.

This was a special appeal from the decree of the Civil Judge of Salem reversing the decree of the District Munsiff in a suit in which the plaintiff sought to invalidate the attachment at the instance of second defendant of certain land, as being the property of the first defendant, in enforcement of a decree for the sale of the land in satisfaction of a debt secured by a mortgage executed by the latter to second defendant.

The effect of the decree of the Civil Judge was to dismiss the plaintiff's suit.

The plaintiff claimed as muttadar, and stated that the first defendant had been merely his tenant-at-will and could not encumber the land with the mortgage to second defendant. The District Munsiff found that there was only a tenancy-at-will, but the Civil Judge came to the opinion upon the evidence that first defendant was the registered holder of the land, and that plaintiff had no right of re-entry so long as the assessment was regularly paid, or until first defendant gave in writing a surrender of the land; that the first defendant had, therefore, an interest which he could mortgage, and which was not determinable after the mortgage by a surrender on the part of the first defendant without payment of the mortgage-debt.

The ground of special appeal relied upon at the hearing was, that the first defendant had no tenant right or interest in the land of which he could make a transfer or mortgage valid as against the plaintiff, his landlord. Now, his tenancy has been found by the Civil Court to have been that of an ordinary puttadar, and we apprehend the established general rule of law in this Presidency to be that such a tenancy when properly created entitles the tenant to the right of occupancy for the purpose of cultivation, until default in payment of the stipulated rent at the time it becomes due, and that it may be determined upon such default under Section 41 of Madras Act VIII of 1865, or at any time by the landlord's acceptance of a surrender by the tenant, which is required to be in writing by Section 12 of the same Act. The first defendant, then, had clearly a right to hold the land as tenant for a conditional term; and we see no reason why that right should not be assignable as a mortgage security or otherwise, like any other interest in land, when there is no express agreement between the landlord and the tenant to the contrary, nor are we aware of any authority prohibiting it. The assignee can claim no other rights than those possessed by the tenant, and is subject to the same conditions and obligations. He can never, as the Civil Judge seems to have thought, throw the burthen of the mortgage-debt upon the landlord. His only security is the title and interest of the tenant, and, as soon as the tenancy has been legally determined, he can only look to his debtor (the original tenant) for payment of what may be due, and, of course, the purchaser of the right, title, and interest of the original tenant at a sale in execution of a decree for the mortgage-debt could claim nothing from the landlord that the tenant would not have been entitled to claim, and would be liable to the rent and to be ejected if he failed to pay it.

In the present case, the tenancy of the first defendant appears to have been a valid and subsisting one when he executed the mortgage assignment to the second defendant; and we are of opinion that it was effectual to pass, as it purports to do, the rights and obligations of the first defendant as tenant of the land, and that the verbal surrender by the first defendant after the assignment was known to the plaintiff cannot be relied upon as rendering it void. For these reasons the decree appealed from must be affirmed.

HIGH COURT—CALCUTTA.

Peacock, B., C. J., and Macpherson, J.

S. M. Padamani Dasi *v.* S. M. Jagadamba Dasi.

*Landlord—Tenant—*8 *Anne, Clause* 14*—Act VII of* 1847*—Claim for Rent.*

Two daughters, as co-partners, were owners of certain property, each having an eight-anna share therein. On June 30th, 1868, *they executed a lease of the property, in which it was provided that a monthly rent should be paid in separate payments to each of the two owners respectively, they giving separate receipts for the same. The tenant having failed to pay rent, one of the owners brought a suit for her share in her own name only, and obtained a decree. In execution of this decree, she seized and sold property belonging to the tenant.*

The sale took place on the 12th of February 1869. *On the 15th of February the other owner brought an interpleader-suit, the tenant having likewise failed to pay rent to her. She claimed to have what was due to her paid out of the proceeds realized by the sale under the decree.* **Held**, *that she was not entitled to have it so paid.*

Held *also, per* **Peacock**, **C. J.**—*The Statute,* 8 *Anne, Clause* 14, *does not apply to this country.*

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HELD, *it would not at any rate apply to a case in which a claimant seeks to enforce payment of her rent from another creditor for rent, even if it would where the claim was against an ordinary execution-creditor.*

THIS was a case referred for the opinion of the High Court by the 2nd Judge (Mr. N. Thomson) of the Small Cause Court. The case was stated as follows:—

"On the death of Rasmani Dasi, her two daughters, Padamani and Jagadamba, inherited certain immoveable property situate in Calcutta, including an upper-roomed house and premises, No. 2, Pollock Street. No partition of the property has been made, but each of the daughters, as co-partners, possesses an eight-anna share therein. On the 30th June 1868 a lease of the house and premises aforesaid, for a term of three years, was executed by Padamani and Jagadamba in favour of W. J. Rowe, in which lease it was provided that a monthly rent of Rupees 215 should be paid by the tenant, in separate payments of Rupees 107-8, to Padamani and Jagadamba respectively, who were to give separate receipts for the same. Rowe having failed to pay rent to Jagadamba in accordance with the terms of the lease, a suit for the half share of the rent, which has accrued due to her up to the end of December 1868, was brought by Jagadamba in her own sole name, on the 14th January 1869, in which she obtained a decree for Rupees 485-12 inclusive of costs, in execution whereof she seized and sold property belonging to the tenant. The net sum of Rupees 677-13 realized by this sale is at present held by the Court in deposit. The seizure in execution took place on the 30th January, and the sale on the 12th February 1869. Mr. Rowe having likewise failed to pay rent to Padamani, the latter, upon the 15th February, three days after the sale in execution of Jagadamba's decree, under the provisions of Section 88, Act IX of 1850, and the 35th Rule of Practice of the Calcutta Small Cause Court, brought an interpleader-suit, in which she claimed a sum of Rupees 645 as due to her for six months' rent of the said house from July to December 1868 at Rupees 107-8 per mensem, and sought that it might be paid to her out of the money realized by the sale in execution of Jagadamba's decree. At the hearing of this interpleader claim it was argued in Padamani's behalf that Jagadamba, having elected the remedy of a suit for rent, stood in no different position from any other judgment-creditor in executing her decree; and that the claim of Padamani as a landlord interpleading to enforce her right of lien over the property of the tenant for rent, was a preferable claim to that of any mere judgment-creditor. On behalf of Jagadamba it was replied that her rights as landlord were the same as those of Padamani; that these rights were not altered by the legal steps she had taken; and that, having used greater diligence in enforcing her rights by suit and by execution, she was entitled to retain what she had recovered. It was further contended on her behalf that she had not seized all the property of the tenant in execution of her decree; and that Padamani's claim might have been satisfied out of what remained. It appeared in evidence that a horse belonging to the tenant, which was upon the premises at the time of the execution, had not been taken; and that some time after the same horse was seized in execution by another creditor, and realized a sum of Rupees 150. There was no evidence that any other property was left on the premises. I was of opinion that Padamani, as the owner of an eight-anna share in the property in question, was entitled, under her interpleader, to a moiety of the sum realized under Jagadamba's execution; but Jagadamba's attorney, being dissatisfied with my order, has asked that the case might be referred for the opinion of the High Court, as to whether, under the circumstances above stated, Padamani is entitled to any, and, if to any, to what portion of the sum realized by the execution-sale at the instance of Jagadamba. Subject to the opinion of the High Court on the question referred a judgment has been recorded in favour of Padamani for Rupees 336-6-3, being one-half of the sum realized under Jagadamba's execution."

Mr. *Branson*, for the plaintiff, contended that Jagadamba's execution was not valid under the Statute 8 Anne, c. 14, which he submitted applied to this country.

Mr. *Kennedy* for the defendant.—This is not to be dealt with as a case of English law. The Statute of Anne does not apply in this country, and the claim cannot be made: *Cawler* v. *Chaplin*.* The goods of third parties on the premises of the tenant are not distrainable for rent under Act VII of 1847: *Dwarkanath Biswas* v. *Udditchurn Addy*.† The right of distress did not exist in Calcutta until introduced by Act VII of 1847. By English law it is immaterial whether the execution be against the tenant or any other person.

Mr. *Branson* in reply.—The Sheriff should have retained a year's rent out of the proceeds of goods seized in execution: *Arnitt* v. *Garnett*.‡ Notice that a year's rent is due may be given after removal of the goods: *Yates* v. *Ratledge*.§ The principle is that the rent must be paid in any case. The fact that the plaintiff has a co-landlord makes no difference.

The following was the opinion of the High Court:—

PEACOCK, C. J.—It appears to me that the plaintiff Padamani is not entitled to claim one-half of the sum realized under Jagadamba's execution. If she is entitled to half, I see no reason why she is not entitled to the whole, because she was a landlord entitled to the rent, and Jagadamba was an execution-creditor. I see no greater reason why Padamani should be paid her rent out of the proceeds of the execution than that Jagadamba should be paid her's, even supposing that the Statute of Anne is applicable to houses and lands situate in Calcutta. Although the law of England has been introduced into Calcutta, it is not every law of England that was so introduced. It appears to me that the Statute of Anne was applicable to lands and houses locally situate in England, and that Act, like many other Statutes which apply to lands in England, was not part of the law of England, which was introduced into Calcutta. If it were necessary to determine the question on that ground alone, I should hold that the Statute of Anne did not apply. By Section 89 of the Small Cause Court Act, Act VII of 1847, which regulates distresses for small rents in Calcutta, was extended to the recovery of all arrears of rent, not exceed-

* 2 Exch., 503.
† H. J., N. S., 361.
‡ 3 B. & Ald., 440.
§ 5 H. & N., 249.

ing Rupees 500; and by a subsequent Act* this law has been extended to rents not exceeding Rupees 1,000. By virtue of the provisions of these three Acts taken together, no distress, except under the provisions of Act VII of 1847, can be levied for arrears of rent not exceeding Rupees 1,000. If Jagadamba had proceeded under Act VII of 1847, and had applied to the Small Cause Court to issue a warrant for the levy of the amount due to her, she might have seized, under the warrant, all the goods which she did seize under her execution. Those goods might have been sold; and, under the provisions of Section 4 of Act VII of 1847, the whole amount of the produce must have been applied in satisfaction of the sums, for which the distress had been levied under the warrant, that is, Jagadamba's distress. It appears to me that the Statute of Anne does not apply to a case like this, in which the claimant was seeking to enforce payment of her rent, not against an ordinary execution-creditor, but against another creditor for rent.

Macpherson, J.—Without expressing any opinion as to whether the Statute of Anne does or does not apply to Calcutta, I am of opinion that it does not apply to this case. The words of the Statute of Anne are that goods are not to be taken in execution, unless the party, at whose instance the execution is sued out, shall, before the removal of the goods from off the premises, pay to the landlord such sum of money as is due to him for rent, provided the arrears do not exceed one year's rent. The first question in this case is, who is the landlord? It appears to me that Jagadamba was as much the landlord as Padamani, and that the provisions of the Statute of Anne cannot apply to a case like this.

Peacock, C. J.—We shall answer the question of the lower Court by stating that Padamani is not entitled to any portion of the sum realized by the execution-sale of Jagadamba, and that Jagadamba is entitled to her costs of this reference.—*Bengal Law Reports, Vol. III, Part XIII.*

Norman and Jackson, E., J. J.

Bhiro Chandra Mozoomdar and others (decree-holders) *v.* Ramundas Mookerjee and others (judgment-debtors.)†

Mesne Profits—Cultivating Ryot.

When a cultivating ryot is ejected by his zemindar, the mere rent of the land realized by the zemindar from another tenant is not necessarily the measure of the damage sustained by the ryot, and recoverable by him as mesne profits.

Baboos *Mahini Mohan Roy* and *Gopal Lal Mitter* for appellants.

Baboo *Srinath Das* for respondents.

The facts are sufficiently clear from the judgment of

Norman, J.—The plaintiff in this suit obtained a decree for possession with wasilat, or mesne profits. In execution, the lower Court awarded, by way of mesne profits, a sum equivalent to the fair and reasonable rent of the entire land, not only of that which was actually occupied by ryots, but also of that which was not cultivated, but which the lower Court thinks might have been cultivated or let to tenants by the defendants.

In special appeal it is objected that the calculation of wasilat proceeded upon a wrong principle. It is urged that the plaintiffs prior to, and at, the time of dispossession were cultivating ryots, and that if they had not been wrongfully dispossessed from the land, they would have realized an amount of profits far exceeding that which the defendants had realized.

It is urged very ingeniously and sensibly by the vakeel for the appellant that in a suit by a ryot who is dispossessed by the zemindars, the mere amount of rent received by the zemindar during the period of dispossession is no measure of the damages sustained by such ryot by being dispossessed. It was pointed out that if the ryot held at the full rate of rent capable of being realized from the land, and the zemindar after dispossessing him should let the land to other people at the same rate, and if, in assessing the wasilat or damages, the rent payable to the zemindar were deducted, and the sarunjami or collection charges were likewise allowed, as has been done in this case, the ryot, though he might have sustained serious injury and loss by being turned out of the land and deprived of his means of making a livelihood, would actually get nothing from his landlord. Therefore it follows that the amount of rent collected by the landlord is not necessarily the measure of damages. In Sedgwick on Damages* it is said that in an action of trespass for mesne profits, which is an action for damages, "the jury are not "confined in their verdict to the mere rent of the "premises, but may give such extra damages as "they think the particular circumstances of the "case demand. So in an early case in England, "*Goodtitle* v. *Tombs*† it was said: The plaintiff "is not confined in this case to the very mesne "profits only, but he may recover for his trouble. "I have known four times the value of the mesne "profits given by a jury in this sort of action of "trespass; if it were not so, sometimes complete "justice could not be done to the party injured." The difficulty which the special appellant has to contend against is, that he has not put his case in the way in which it is now put by his vakeel. He has not asked for, or obtained, any decree or order for the assessment of his damages on the footing on which, he now says, they ought to have been assessed. He has sued for and obtained a decree for mesne profits only, and has accepted without objection a remand directing an enquiry into the amount of the mesne profits. We can only take the decree as it stands, and, in so doing, we give to the plaintiff the mesne profits on the rent of the land upon the usual principle. There is, therefore, no ground for interfering with the decision of the Judge on this point.

The special appellant further contended that he being a cultivating ryot ought to have received the entire rent without any deduction of the sarunjami or collection charges, because, if he had been occupying the land, he would have realized the rent, and the collection charges would have cost him nothing.

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* Act XXVI of 1864, S. 4.

† Miscellaneous Special Appeal, No. 539, of 1868, from a decree of the Officiating Judge of Dinagepore, dated the 17th August 1868, amending a decree of the Subordinate Judge of that district, dated the 5th May 1868.

* 4th Edition, 136.

† 3 Wils., 121.

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Unfortunately for the special appellant there are two decisions given by the Judge on two separate appeals from the same judgment passed by the first Court. He has only appealed against one of these judgments, and it is in the judgment which is not brought before us that the Judge made an order allowing sarunjami. We need not, therefore, pronounce any opinion on that point. The appeal will be dismissed; but, under the circumstances, the parties will pay their own costs.

JACKSON, J.—I also think that the appeal should be dismissed. The mesne profits awarded are the damages which the judgment-creditors sustained, as far as the evidence went. It may be that the plaintiff might have been entitled to a higher rate if he had produced sufficient evidence. But he has not done this.—*Idem.*

JACKSON, L. S., AND MARKBY, J. J.

Raja Rash Bihari Lal Sing (one of the defendants) v. Nabayi Paddar (plaintiff) and others (defendants.)*

Suit for Possession—Sanad—Evidence—Special Appeal.

In a suit for recovery of possession of certain land which the plaintiff claimed under, and by virtue of, a sanad (grant) from the zemindar, and from which he had been dispossessed by the defendants, the lower Appellate Court held that the execution of the sanad was not satisfactorily proved, but that it was not a forgery, and that there was other corroborative evidence (such as dakhilas produced before it) to prove the case of the plaintiff.

HELD, *that when a claim is based upon a sanad, and the plaintiff fails to prove the execution of the sanad itself, he may prove his claim by other means. In a suit for mere possession, it is unnecessary to state or to prove a particular title.*

The reception of papers and documents by the lower Appellate Court, unless objected to at the time, cannot be made a ground of special appeal.

Shiu Dyal Puri v. *Thakur Mahabir Prasad*† *and Ramdhan Chuckerbutty* v. *Komal Tara*‡ *distinguished.*

* Special Appeal, No. 2,742, of 1868, from a decree of the Deputy Commissioner of Manbhoom, dated the 18th July 1868, reversing the decree of the Munsiff of Raghunathpore, dated the 26th of February 1868.

† 2 B. L. R., App., 8.

‡ BAYLEY AND HOBHOUSE, J. J.

Ramdhan Chuckerbutty (plaintiff) *v.* Srimati Komal Tara (defendant.)§

The 3rd April 1869.

Unless a plaintiff can prove the particular title set up by him, he is not entitled to a decree.

Baboos *Ramesh Chandra Mitter* and *Nalit Chandra Sen* for appellant.

Baboo *Srinath Banerjee* for respondent.

HOBHOUSE, J.—In this case the plaintiff alleged that there was a shikmi taluk called Ramjai Pal; that on the 2nd Falgoon 1244 he had purchased from the proprietors of that taluk one drone of land within the taluk, and that, under the conditions of his purchase, he was what he calls an *Agguth* Talukdar, paying a rental of Rupees 8 to the proprietors. He then went on to state that in execution of a decree against Ram Lochan Pal, a representative of a proprietor of this taluk, the defendant, special respondent, had purchased the rights of the said Ram Lochan, and, under colour of an order of Court of 31st July 1866, had dispossessed the plaintiff of the one drone in question.

The defendant denied that the plaintiff was the *Agguth* Talukdar he alleged himself to be, and stated that the taluki lands in question were the property of Ram Lochan Pal, the judgment-debtor.

The first Court found that the plaintiff had been in possession of the lands since the year 1244, and inferred from thence that the plaintiff was the *Agguth* Talukdar he alleged himself to be, and gave him a decree for possession.

By the alleged document of 1244, not the whole of the shareholders, but certain of the shareholders of the taluk, purported to convey the lands in question as their share to the plaintiff. It is necessary to state this in order to understand correctly the reasoning of the lower Appellate Court's decision. That Court says that it cannot give the plaintiff a decree. First of all it says that it cannot give him a decree, because it is not proved that the sharers in the taluk who were said to have conveyed the lands to the plaintiff, held those lands in separate portions. Neither can the Appellate Court, it says, give the plaintiff a decree as an *Agguth* Talukdar, because the plaintiff's vakeel points out to him that the plaintiff does not now call himself an *Agguth* Talukdar, but a sharer in the original taluk. Neither, the Appellate Court says, can it give plaintiff a decree as a talukdar having a share in the taluk, because the Court does not find any proof as to the extent of the share. Neither, the Appellate Court says, can it give the plaintiff a decree as an independent talukdar, for that is not his position; and in conclusion the Court says that in this case it finds no evidence as to the creation of an *Agguth* Taluk, nor any evidence as to the plaintiff's having purchased any such specific shares in the taluk as entitled him to a decree. The lower Appellate Court, therefore, dismissed the suit with costs.

In special appeal there is in reality but one contention before us, and it is this, viz., that when there was evidence on the record that the plaintiff had been in possession of the lands in dispute in some one capacity or other, for a period of something like 32 years, it was incumbent on the lower Appellate Court to re-place the plaintiff in that possession, unless the defendant could show a better title, under which he could keep the plaintiff out of such possession.

A great number of the precedents of this Court and of the Court of the Judges of Her Majesty's Privy Council has been quoted to us on the question of possession, and the effect of these precedents seems to us to be that, other things failing, possession is a good evidence of title unless some better evidence is shown, and we are not prepared to dissent from this proposition; but the question is, it seems to us whether it can be applied to the present case, and we are of opinion that it cannot. In this case the plaintiff did not come to Court on the ground simply of previous possession of the lands in dispute, but came to Court upon a distinct and a definite title, and, had that title been proved, had the plaintiff been put in possession under it, the effect of the decree would have been that the plaintiff would have been a tenant of the lands in dispute paying a quit-rent to the defendants representing the talukdars, and nothing more; and under no liability to have his rents increased. Unless, therefore, the plaintiff was able to prove the case which he set up, we think he was not entitled to a decree, and he entirely failed to prove that case. He produced a document of the year 1244, but he did not show whence that document came from, in whose custody it had been, and how he became possessed of it, nor did he even swear that he even became possessed of it himself. Neither did he prove that he had been in possession of the lands in dispute under the title of *Agguth* Talukdar which he set up, for the very persons who professed to have paid rents for the lands to the

§ Special Appeal, No. 2,867, of 1868, from a decree of the Judge of Tippera, dated the 21st August 1867, reversing a decree of the Principal Sudr Ameen of that district, dated the 17th February 1867.

THIS was a suit to recover possession of certain land, and also for damages to certain timber cut and taken away by the defendants which stood upon the said land, upon the allegation that the plaintiff had obtained a sanad from the Zemindar (Rajah) under which he had obtained possession, from which he was subsequently ousted by the defendants.

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The defence set up was that the jungle appertained to the *mal* (rent-paying) land of the Rajah, and that, according to his permission, all the tenants in the village cut wood in the said village.

The Munsiff dismissed the suit.

On appeal the Officiating Deputy Commissioner held that the oral evidence brought forward to prove the execution of the sanad was untrustworthy, but that the sanad was not a forgery; that it bore every appearance of being genuine; that the dakhilas produced before him afforded a strong corroborative evidence in favour of the plaintiff as proving continued possession and payment of rent. He accordingly decreed the suit

Baboo *Bansidhar Sen* for appellant.

Baboo *Debendra Narayan Bose* for respondent.

Jackson, J.—In this case three grounds of special appeal have been urged before us. The first of them is, that the plaintiff having failed to establish the particular title under which he sued, ought not to have had a decree; secondly, that the lower Appellate Court was wrong in taking the dakhilas put in by the plaintiff in that Court as evidence, inasmuch as they were neither proved nor admitted; and thirdly, that the oral and other evidence in the case were insufficient to justify the decree passed.

The plaintiff alleged that upon the Rajah whom he made a *pro formâ* defendant in this suit desiring to re-claim a portion of waste land, the plaintiff undertook to do it, and commenced clearing a portion of the land and putting up an embankment, and thereupon the Rajah gave him a sanad to hold that land at a quit-rent of 2 Rupees per annum, and also to cut and use jungle thereon; but afterwards the principal defendants commenced a dispute with him about this jungle land, and cut down some jungle therein, and dispossessed him of the land on the eastern side of his grant; that he had made a complaint on this subject to the Police authorities who referred him to a civil suit, and consequently he sued to recover possession of the land in question, and for damages that he valued at 5 rupees, the land being valued at 15.

The Munsiff dismissed the suit; but on appeal the Deputy Commissioner, who is also Subordinate Judge, reversed that decision and gave judgment for the plaintiff to the full amount of his suit. It may be observed, however, that the decree itself only orders the plaintiff to be re-placed in possession of the land, being silent as to damages, and also awards him costs.

The first ground of appeal above mentioned proceeds on the circumstance that the plaintiff did not prove the sanad mentioned in the plaint, to the satisfaction of the lower Appellate Court; and it is contended that, as the sanad itself was not proved, the particular title depending on that sanad must fail, and the suit ought to have been dismissed.

We are referred to some cases, *Shiu Dyal Puri* v. *Thakur Mahabir Prasad** and *Ramdhan Chuckerbutty* v. *Srimati Komal Tara*,† in which it was held that the particular title set up by the plaintiff being unproved, he would not be entitled on proving mere possession to a decree as under the particular title claimed. That ruling, I think, quite correct. But it is one thing to say that a party must prove the particular title which he sets up, or that mere possession will not prove a particular title, as, for instance, possession will not prove a mokurari title; but it is quite another thing to say that a party who claims to hold land by a grant, such grant being evidenced by a sanad, and then fails to prove the execution of the sanad itself, may not prove the same grant by other means.

But it is to be observed also in this case that the decree complained of does not declare the plaintiff entitled to hold the land in dispute on any particular terms, or for any particular time. It merely orders him to be re-placed in possession of the same with costs of suit. It seems to me that the Court below might lawfully and regularly give such a decree, although the plaintiff failed to prove the execution of his sanad.

Then, as to the evidence of possession consisting of dakhilas put in in the lower Appellate Court, it is contended that these dakhilas were never proved, and we are asked to assume that the Judge has accepted those dakhilas simply on their being produced by the plaintiff in his Court, either without admission by the defendant, or in spite of his remonstrance. I think we ought not to assume that the Judge has done either the one or the other. In a case of this sort, where the appellant is really aggrieved by the conduct of the lower Appellate Court, we should expect him to satisfy us that he had taken the objection to the reception of the papers; that he had protested against their being received, and that they had been received in spite of his protest.

I, therefore, think that the decision of the lower Appellate Court is right, and ought to be affirmed with costs.

Markby, J.—I am of the same opinion. I think the distinction between this case and the cases *Shiu Dyal Puri* v. *Thakur Mahabir Prasad*‡ and *Ramdhan Chuckerbutty* v. *Komal Tara*§ is quite clear. There the plaintiff was seeking to have declared in his favour a particular kind of right, in one case a mokurari tenure, and, in the other case, a particular kind of talukari right, and, of course, the very essence of each of those cases was that the plaintiff should show the existence of that particular right before he could have it declared in his favour. But in this case the plaintiff seeks for no declaration at all. He only asks to be put into possession; and I observe that the learned Judges who decided the case of *Ramdhan Chuckerbutty* v. *Komal Tara*§ expressly recognize the principle that possession may be evidence of title.

plaintiff did not know the capacity in which the plaintiff received those rents, and the plaintiff himself ignored his own title, and endeavoured at the last moment, before the lower Appellate Court, to set up an entirely different title; and further, we think it is quite clear from the records of the case that the plaintiff did not before the lower Appellate Court set up the mere fact of a possession of some kind as giving him a title to a decree, but set up only and distinctly a possession of a particular kind which it is admitted, and it is found he was altogether unable to prove.

We think, therefore, that, whatever may be the legal effect of previous possession in suits generally, the plaintiff in this particular instance could not, and, indeed, did not, set up that general possession upon which it is urged by his pleader before us now that we ought to direct the Court to give him a decree, if on remand the Court shall find on evidence on the record that the plaintiff had proved merely a general possession.

We dismiss the special appeal with costs.

* 2 B. L. R., App., 8.
† See p. 99, *ante*.
‡ 2 B. L. R., App., 8.
§ See p. 99, *ante*.

I may observe also that so far as relates to the objection that the plaintiff did not prove the particular title which he alleged in his plaint, that it was quite unnecessary for the plaintiff to state in his plaint what his title was. The precedent as given for plaints in the Code of Civil Procedure for cases like the present does not set out title, and the plaintiff having done so was not bound by it; but, having brought his suit for possession, it was, I think, open to him to prove by possession a title sufficient to recover against the defendant.

As to the other objection, I think the rule which has been acted upon, at least since I have sat on this Bench, is the right one, namely, to presume that the lower Court has done its duty; and if a vakeel takes upon himself to say that he has not done so, he must give something tangible, something more than mere suggestion, before he can induce us to interfere. In most cases, however, as in this, vakeels do not even go so far as to assert on their own responsibility that the lower Court has committed the error of which they complain.—*Idem.*

SHORT NOTES OF CALCUTTA CASES.

NORMAN AND JACKSON, E., J. J.

Ranglal Sahu and another (two of the defendants) *v.* Siali Dhar Das (plaintiff.)*

Measurement—Lakhiraj—Act VI (B. C.) of 1862.

A zemindar is not entitled to measure the lands of a lakhirajdar holding a rent-free tenure within the limits of his estate.

Baboo *Debendra Narayan Bose* for appellants.

Mr. *C. Gregory* for respondent.

THE facts are set forth in the judgment following:—

NORMAN, J.—This is a suit brought under Section 9 of Act VI (B. C.) of 1862, by which the plaintiff made an application to the Collector, praying him to allow the measurement of certain lakhiraj land, and to enjoin the attendance of the special appellant, Ranglal Sahu and others. It appears that the plaintiff purchased an estate, No. 866 in the Towji Register, situated in Mauza Jairampore, Pergunna Sripore, at a sale for arrears of rent. The defendants held 82 bigas of land rent-free, and have obtained a decree declaring their right to hold the lands as lakhiraj.

The first Court made an order that the defendants "should be present and get the disputed land measured by the plaintiff." That decision was affirmed by the Judge. He says, "that the plaintiff has a right to measure the land appertaining "to 866 of the towji, and if the plaintiff measures, "takes possession, and assesses any land which "may have been decreed to the appellants by the "Civil Court, the appellants have their remedy; "but the plaintiff is not debarred from measuring "whatever lands may still belong and pertain to "No. 866 in the Collector's Towji."

We are of opinion that the decisions of the lower Courts are erroneous, and must be reversed.

In order to determine whether the appellant has a right to measure the lands of the lakhirajdar before proceeding to consider the language of that section, it is necessary to observe that no man has any natural right to go upon land, which is the exclusive property of another, or to measure it without his permission. If such a right exists in any case, it is one which must be created by some legislative enactment. Can we find words creating such a right in Section 9? We think not. Section 9 says, "Every *proprietor of an estate* or tenure or other "person in receipt of the rents of an estate or "tenure, has a right of making a general survey "and measurement of *the lands comprised in such* "*estate* or tenure or any part thereof, unless "restrained from doing so by express engagement "with the occupants of the lands." Can it be said that, according to the common understanding of men, if a person occupies lakhiraj or rent-free land adjacent to another's estate, but not shewn to be dependent on it, or in any way connected with it, that the lakhiraj lands are comprised in the estate? In the present case, the lands in Towji 866 are stated to be resumed lakhiraj mehal, in which the 82 bigas of land now in question were supposed to be included. The defendants have since, by a regular suit, established their title as lakhirajdars. The result is that they are holding an estate wholly distinct from, and unconnected with, the lands held by the plaintiff under the settlement of Towji No. 866.

It appears to us that in no sense can the defendant's lands be said to be comprised within that settled estate. Reading Section 9, in order to see what are the powers of the Collectors, an additional argument presents itself in support of the view we take. The Collector, if the case so requires, is to pass a decision enjoining or excusing the attendance of under-tenants or ryots, not of all persons occupying land within the ambit of the estate. Under such circumstances, we reverse the decision of the lower Courts, with costs in all the Courts, and interests.—*Bengal Law Reports, Vol. III, Part XIII.*

KEMP AND GLOVER, J. J.

Charles Macdonald (one of the defendants) *v.* Rajaram Roy and others (plaintiffs.)*

Jurisdiction of Civil Courts and Revenue Courts—Suits to recover possession of land.

In a suit in the Civil Court, to recover possession of lands, which, the plaintiff alleged, he had leased to the defendant or manager of an indigo factory, and also of other lands over which he had given a zuripeshgi lease, HELD *that the suit was rightly brought in the Civil Court, and that the Revenue Court had no jurisdiction.* HELD *also that, as the defendant had made no objection to the manner in which plaintiff had calculated damages in the Courts below, the question could not be gone into in special appeal.*

Mr. *R. T. Allan* for appellant.

Baboos *Chandra Mudhab Gose* and *Ramesh Chandra Mitter* for respondents.

THE facts of this case sufficiently appear in the judgment of

* Special Appeal, No. 2,450, of 1868, from a decree of the Judge of Purneah, dated the 26th June 1868, affirming a decree of the Deputy Collector of that district, dated the 25th of March 1868.

* Special Appeal, No. 3,251, of 1868, from a decree of the Judge of Tirhoot, dated the 9th June 1868, reversing a decree of the Principal Sudr Ameen of that district, dated the 19th December 1867.

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Glover, J.—The plaintiff in this suit is a co-sharer in a certain mauza in Zilla Tirhoot, and his suit is to recover possession of 72 bigas, 1 kata, 3 dhoors of land from the defendants in this wise:—The allegation of the plaintiff is that, in the year 1269, he leased his share of the estate to the defendant, the manager of an indigo factory, and along with that share, likewise leased to him certain zerayat lands, which he cultivated himself within the mauza as a ryot; that at the time of the expiration of the zuripeshgi lease, the defendant gave back to him possession of his share of the estate, but retained the zerayat lands; and to recover these, the present suit is brought. The defendant's statement is that the lands which the plaintiff asserts had been given to him (defendant) along with the pati were never held by the plaintiff, but were the lands of one Gandowr Sing, a co-sharer in the estate from whom the defendant holds.

The first Court dismissed the plaintiffs' suit, but the Judge, on appeal, found that the 72 bigas in dispute comprised the zerayat cultivation of the plaintiff apart from his share in the estate; that these lands were identical with the land which the defendant claimed to hold from Gandowr Sing; and that the plaintiff was entitled to possession.

In special appeal it is contended in the first place that, as this suit assumes the relationship of landlord and tenant between the plaintiff and defendant, the suit was not cognizable by the Civil Courts, under Act VIII of 1859, but should have been instituted in a Revenue Court, under Act X of 1859; and, secondly, that, supposing the suit to have been rightly brought in the Civil Court, it was incumbent on the plaintiffs to show a distinct title for these particular lands, inasmuch as the defendant claims to hold from Gandowr Sing, who is not shown to be other than a shareholder in the estate, and that the defendant, holding through Gandowr Sing, would have, at least, a joint interest in the mauza, and thus a sufficient title to defeat the plaintiffs' suit. With regard to the first objection, we find that the plaintiffs never considered or said that they considered the defendant as their tenant; on the contrary, their allegation was that, from the date of the expiration of the zuripeshgi lease, the zerayat lands had been forcibly withheld from them by the defendant, who, from that time, was a trespasser, and the defendant, from the very first, distinctly repudiated the relationship of tenant to the plaintiffs, alleging that he held from a third party. We think, therefore, that this suit was undoubtedly cognizable by the Civil Courts, and that the Revenue Courts had no jurisdiction in the matter.

With regard to the second objection, the Judge finds as a fact on the evidence, that the 72 bigas, which the plaintiffs now claim, formed the plaintiffs' cultivation, exclusive of his share in the estate; that this was the land which the plaintiffs made over to the defendant at the time of giving the zuripeshgi lease, and that the defendant has not returned, but still holds possession of that land. It is a notorious fact that, in the Behar districts, co-sharers in estates frequently hold land in cultivation over and above their share in the estate; they cultivate these lands themselves, as ryots paying rent as such to all the co-sharers, including themselves; so that, supposing Gandowr Sing, from whom the defendant claims to hold, to be a shareholder in the property, the only interest he could possibly have in these 72 bigas (after the finding of fact come to by the Judge) would be his right to receive a proportionate share of the rent of the land.

On the facts as found, it is clear that the lands which the plaintiffs claim did not form the pati or share of Gandowr Sing, and could not have been eased by Gandowr Sing to the defendant as forming that share.

A further objection was taken by the special appellant's pleader to the amount of damages; with reference to it, he relied upon a Full-Bench decision of this Court, in the case of *Ranee Asmed Kooer* v. *Maharanee Indurjeet Koor*.* It is possible that, had this objection been pressed below, or, indeed, at any stage of the proceedings, (for it does not appear to have been taken in the grounds of special appeal), the ruling referred to might have had some application, and that the most the plaintiff could have recovered would have been the amount of a fair and reasonable rent for the land, as if the same had been let to a tenant during the period of the unlawful possession of the wrongdoer: but we find, on referring to the Judge's decision, that no objection was ever taken to the amount of damages claimed by plaintiffs, and the plaintiffs' patwarri had given evidence as to the nature and the extent of the crops which could be grown on the land during the period for which damages are claimed.

As, therefore, the defendant chose to rest his case entirely on the ground that he held the land from Gandowr Sing, and that the 72 bigas were not the property of the plaintiffs, and did not take any exception to the way in which the plaintiffs had calculated the damages he alleged himself to have sustained, we do not think that, at this late stage of the case, and specially considering that we are now in special appeal, we should be justified in re-opening the proceedings, or in applying a principle which the special appellant himself never asked to have the benefit of. The special appeal must be dismissed with costs.—*Idem.*

Norman and Jackson.

Tetai Abom (one of the defendants) *v.* Gagai Gura Chawa (plaintiff.)†

Endorsement of Transfer—Stamp Act.

Transfer of an under-tenure, endorsed upon the back of the tenant's patta, is not admissible in evidence, unless it be stamped, as though it were a separate deed.

Baboo *Abhaya Charan Bose* for appellant.

None for respondent.

The judgment of the Court was delivered by

Norman, J.—The plaintiff sues for the possession of 30 bigas of land, which he alleges that he purchased from the defendant's father on the 4th of May 1863 for Rupees 12. As evidence of the purchase he puts in a transfer endorsed upon the potta by the defendant's father. The lower Appellate Court, reversing the decision of the Munsiff of Sibsagur, has given the plaintiff a decree, relying upon the endorsement as proving that the defendant's father transferred the patta to the plaintiff.

* Case No. 362 of 1867; April 4th, 1868.

† Special Appeal, No. 2,074, of 1868, from a decree of the Deputy Commissioner of Sibsagur, dated the 8th May 1868, reversing a decree of the Munsiff of that district, dated the 16th May 1867.

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The objection taken before us is that this endorsement has been rejected by the first Court upon the ground that it was not stamped; and, as such, it was improperly admitted in evidence by the lower Appellate Court. Baboo Abhaya Charan Bose, the appellant's vakeel, refers us to Section 14 of Act X of 1862, by which it is provided that no deed, for which any duty shall be payable under Section 2 of this Act, shall be received as creating or transferring any right, or as evidence in any civil proceeding in a Court of Justice, unless such deed, instrument, or writing shall bear a stamp of a value not less than that indicated to be proper for it by the schedule annexed to the Act. Under the 23rd clause of Schedule A, a conveyance, or instrument of any description whatever, executed for the sale or transfer, for a consideration, of any land or other property, moveable or immoveable, or of any right or interest in any land, when the purchase-money therein expressed shall not exceed Rupees 100, shall bear a stamp of 1 Rupee. The plaintiff's case is that this endorsement on the patta was an instrument of transfer for a money-consideration of the land to which the patta relates, and, therefore, according to the plaintiff's own case, it required a stamp of 1 Rupee. We think the objection taken by the appellant's vakeel is well founded. The instrument in question is not admissible in evidence; and as the rest of the evidence is not consistent with the defendant's case, which is that this property came into his hand as khurdua, *i. e.*, executor, manager, or trustee of the defendant's father, we reverse the decision of the lower Appellate Court, and dismiss the suit with costs.—*Idem.*

KEMP AND GLOVER, J. J.

Nanku Roy (plaintiff) *v.* Mahabir Prasad and others (defendants.)*

Suit to reverse an order of the Revenue Court—Jurisdiction of Civil Court.

Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts.

Baboo *Ramanath Bose* for appellant.

Baboo *Kali Krishna Sen* for respondents.

THE facts sufficiently appear in the judgment of the Court, which was delivered by

GLOVER, J.—This was a suit to recover possession of certain land, from which the plaintiff had been dispossessed by an order of the Deputy Collector, afterwards confirmed by the Collector, under Section 25 of Act X of 1859. On an application made to him by the zemindar, the Court of first instance went into the case, and on the merits decreed the plaintiff's claim; but the Subordinate Judge, on appeal, held that this being a suit to get rid of the Collector's order under Section 25 of Act X of 1859, it was not cognizable in any other Court than that of the Collector, and that the Munsiff had no jurisdiction; he, therefore, reversed the order of the first Court, and threw out the plaintiff's case. It seems to us quite clear that the Principal Sudr Ameen's decision in this matter was wrong. It has been laid down in the case of C. J. Phillips, decided on the 19th June 1863, that a suit to contest the orders of a Collector under Section 25 of Act X may be brought either in the Collector's Court or in the Civil Court as the case may be, and this ruling has been upheld in a Full-Bench decision of this Court in the case of *Mudun Mohan Roy* v. *Gourmonee Goopto** and in many others, which it is needless to mention; parties suing to reverse a Collector's order under that section, may do so either in the Revenue or in the Civil Courts. It is quite clear, therefore, that the Munsiff had jurisdiction to try this case, and that the Subordinate Judge was wrong in setting aside his decision on the ground that he had no jurisdiction.

An objection has been taken by the pleader for the special appellant, that it would be useless to remand this case to the Subordinate Judge for trial on the merits, inasmuch as the plaintiff's own case discloses no right of action; that his tenure, as stated by himself, did not amount to more than a right of occupancy, which he claimed to have purchased; and that by a ruling of a Full Bench of this Court, in the case of *Ojoodhya Pershad* v. *Mussamut Imam Bandi Begum*,† it has been held that a right of occupancy is not saleable; that, therefore, the plaintiff, claiming to have purchased such a right, had, in reality, no ground on which to bring this suit at all. On this we observe that the objection to the plaintiff's right to bring this suit was never raised at any stage of the proceedings; that the defendant pleaded to the plaintiff's case, as it was brought by him, and he never objected to the title he set up; and we think that, at this eleventh hour, it would be wrong to force the plaintiff to establish an altogether new case, or to make him prove what the defendant had never at any time asked him to prove. Moreover, the judgment of the Full Bench does not go to the length of saying that, under every state of circumstance, a right, occupancy, or a right in land, which has extended over 12 years, is not transferable; as a general rule, no doubt it lays down that, when a tenure was not transferable before the passing of Act X, the passing of that Act would not have the effect of rendering that tenure a transferable one, but it specifically exempted cases in which rights of occupancy, or tenures of a similar description, were transferable by local custom. In this case, for any thing that is before the Court, the plaintiff might have purchased this tenure, which he now seeks to recover under such a local custom, and it may very well be that the defendant's silence, and his pleading to the plaintiff's suit, without raising any such objection, was a *quasi* admission that there was some such custom under which the tenure might have been transferred. However it may be, it has never been ruled by any judgment of this Court, that under no circumstances can a right of occupancy be transferred; and, therefore, there is no sufficient ground for saying that, on the very face of the plaintiff's case, there was no right of action.

The case must be remanded to the Court of the Subordinate Judge, in order that he may try the case on the questions raised before the Munsiff, and pass a decision. Costs to follow the result.

MITTER, J.—I concur. I express no opinion as to whether such a suit as the present could have been instituted in the Collector's Court, but it is settled law that the Civil Courts have ample jurisdiction to entertain it.

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* Special Appeal, No. 160, of 1869, from a decree of the Subordinate Judge of Shahabad, dated the 26th November 1868, reversing a decree of the Munsiff of that district, dated the 23rd April 1868.

* Case No. 2,318 of 1862; August 21st, 1863.

† Case No. 2,609 of 1866; May 31st, 1867.

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BAYLEY AND MITTER, J. J.

Kali Kamal Mazumdar (defendant) *v.* Shib Suhai Sukul (plaintiff.)*

Breach of contract to plant Trees — Ejectment — Limitation — Act X of 1859, *Section* 30.

In 1857, *the plaintiff gave a lease of a garden to defendant, who agreed to plant, within five years from the date thereof,* 2,000 *betel-nut trees. The defendant failed to do so.*

In 1867, *the plaintiff brought the present suit for ejectment on account of the breach of the contract entered into by the defendant.*

HELD, *that by Section* 30, *Act X of* 1859, *the suit was debarred by limitation.*

Baboo *Kishen Dayal Roy* for appellant.

Baboos *Chandra Madhab Ghose* and *Kali Mohan Das* for respondent.

MITTER, J.—This was a suit for the cancelment of a lease, on the ground of an alleged breach of its conditions.

The breach referred to consists in the failure of defendant to plant 2,000 betel-nut trees within five years from the date of the lease. The lease was executed on the 9th Paush 1264 (1857), and the present suit was brought in 1274 B. S. (1867).

The only question we have to determine in this special appeal is, whether the claim of the plaintiff is barred by the Rule of Limitation, prescribed by Section 30, Act X of 1859. We are clearly of opinion that it is. There can be no doubt that the plaintiff's cause of action accrued when the breach he complains of actually took place, that is to say, on the 10th of Paush 1269 (1862), and the plaintiff was bound to sue within one year from that date, according to the provisions of the section above recited. This the plaintiff has failed to do.

It has been said that the plaintiff has got an annually-recurring cause of action, but there is nothing in the lease to support such a contention, and the pleader for the respondent has failed to show that there is any authority in support of it.

It was next urged that the plaintiff had already taken possession of the property in question in consequence of the breach above referred to, but that the defendant was restored to possession under a decree passed in a suit instituted by him according to the provisions of Clause 6, Section 23, Act X of 1859, and it was accordingly contended that the plaintiff's cause of action accrued when the defendant was thus restored to possession. This contention is manifestly wrong. The plaintiff cannot be permitted to plead his own wrong, in order to avoid the operation of the Law of Limitation. He had no right whatever to eject the defendant of his own authority, and the Court which decided the suit above referred to was fully justified in restoring the defendant to possession. It has been further urged that the plaintiff's cause of action is a *continuing* one; but if this were so, the provisions of Section 30, Act X of 1859, would become a nullity so far at least as suits of this description are concerned.

This special appeal is accordingly decreed, and the plaintiff's suit is dismissed with costs in all the Courts.

* Special Appeal, No. 3,230 of 1868, from a decree of the Judge of Tipperah, dated the 4th September 1868, reversing a decree of the Deputy Collector of that district, dated the 29th June 1868.

OFFICIAL PAPERS.

LANDING OF GOODS—NOTICE OF LIEN.

Proceedings of the Madras Government, Revenue Department, 14th December 1869.

Read the following papers :—

From the Chairman, Chamber of Commerce, to the Chief Secretary to Government, Fort Saint George, dated Madras, 21st September 1869.

The Chamber have had under consideration Act XVII of 1869, "to shorten the time for landing goods," and have observed that, by the amended Section 52 of the Consolidated Customs' Act, the procedure in respect of goods not landed within the time allowed, provides for the number of working days not exceeding fifteen, being, from time to time, appointed by the local Government by Notification in the *Official Gazette.*

2. After mature deliberation the Chamber have desired me to solicit the Government to authorize the Collector of Sea Customs to act upon a notice of a lien on goods immediately on arrival in the case of all steamers, and three days after they have commenced to discharge in the case of sailing vessels.

Forwarded to the Board of Revenue for their observations.

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

FORT SAINT GEORGE,
24th September 1869.

Proceedings of the Board of Revenue, dated 22nd October 1869, No. 7,870.

Read the following letter from the Collector of Sea Customs, to the Acting Secretary to the Board of Revenue, dated Madras, 12th October 1869, No. 1,047.

Board's Proceedings, 11th instant.

2. I have the honour to state that I see no objection to the request of the Chamber of Commerce being complied with.

In this letter the Collector of Sea Customs reports that he sees no objection to the course proposed by the Chamber of Commerce, namely, that in fixing, under Act XVII of 1869, the period within which, if goods be not landed, they should be liable to detention at the Custom-house on notice of a lien for freight, &c., the local Government should declare that, in the case of steamers, goods must be landed *immediately,* and in the case of sailing vessels *within three days of their commencing to discharge cargo.*

2. The Board cannot concur in the recommendation of the Chamber of Commerce, and are of opinion that the just interests of the public demand that reasonable time should be allowed to consignees to clear goods at their own expense. The adoption of the periods specified would place in the hands of steamers' and ships' agents a power

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of landing without option allowed to the consignee, and furnish them with a summary mode of enforcing payment of whatever they might claim as remuneration.

3. The Board have reason to know that even under the present law great complaints are made of exorbitant demands on the part of steamer agents, who endeavour to secure a monopoly of the business of landing and to turn it to the best account.

4. The Board are clearly of opinion that in the case of steamers at out-ports, a period of not less than 12 hours' daylight should be allowed, and at Madras of 48 hours; and in the case of sailing vessels they would advocate a period of four days at out-ports, and eight days at Madras.

Proceedings of the Board of Revenue, dated 16th November 1869.

Read the following letter from the Collector of Sea Customs, to the Acting Secretary to the Board of Revenue, dated Madras, 2nd November 1869, No. 1,110.

With reference to paragraph 3 of the Proceedings of the Board of Revenue, dated 22nd October 1869, No. 7,870, I have the honour to inform you that all packages arriving by the steamers belonging to the companies noted in the margin, (the only ones whose steamers ply here regularly,) are landed by the several agents immediately on the arrival of their steamers, and delivered to consignees. This system appears to have worked satisfactorily in Madras, as no complaints were ever brought to me against it. I further beg to add that the English and French steamers remain in this roadstead at most twelve hours, and those of the B. I. S. N. Company two days. I, therefore, think that the opinion expressed in paragraph 4 of the Proceedings above noticed regarding the time to be allowed for steamers to land goods will be unsuitable to the requirements of the steam trade of this port.

P. and O. Company.
Messageries Imperiales Company.
B. I. S. N. Company.

Submitted to Government in continuation of Board's Proceedings of the 22nd October.

2. The Collector of Sea Customs thinks that the opinion expressed in paragraph 4 of those Proceedings, (viz., that forty-eight hours should be substituted for the period of fifteen days hitherto allowed for landing goods,) will be unsuitable to the requirements of the steam trade of this port.

3. He states that it has hitherto been the practice for agents, immediately on the arrival of the steamer, to land goods and deliver them to the consignee, and that the system has worked well and given rise to no complaints

4. In making their recommendation the Board did not anticipate that the alteration proposed would much affect the existing system in regard to the steam shipping trade. The course recommended by the Chamber of Commerce and supported by Mr. Blair involved substituting for fifteen days the term *immediately*, and appeared to the Board calculated to expose consignees to hardship by removing one of the safeguards against unreasonable charges on the part of steamer agents; moreover, it seemed opposed to the principle of the law, which was not intended to afford aid to ship-masters and agents until after the occurrence of a *laches* on the part of consignees.

5. The circumstances of the port of Madras are such that to enact that goods not landed *immediately* by the consignee should be liable to be landed at once by the steamer agents would be to deprive the former of any period whatever during which he should be able, by landing his own goods, to retain uncontrolled possession of them.

6. The wording of the amended Section 52 is, "within such number of working days * * * as the "local Government shall appoint, etc.;" and it seems questionable whether this authorizes the appointment of a period less than a whole working day.

7. If the convenience of the steam companies necessitates that their agents should commence to land goods at once, the case is similar to that provided for in Section 53; and there is no hardship to them in not permitting them by their own act, done for their own convenience and without the consent of the other party to the contract, to establish thereby to their own advantage a lien on the goods which they would not otherwise possess.

8. Besides this it is open to them to introduce a specific stipulation in their bills of lading, fixing an earlier period under Section 54; and this course has the advantage of giving shippers and consignees due notice.

9. On a full consideration of the subject the Board see no reason to modify the views already expressed in their Proceedings of the 22nd October 1869.

ORDER THEREON, 14th December 1869, No. 3,167.

The Government have given the Board's Proceedings recorded above their most careful consideration, but they are not of opinion that any practical inconvenience to consignees is likely to result from the adoption of the proposal made by the Chamber of Commerce, supported as it is by the Collector of Sea Customs. The necessary notification will accordingly be issued.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

CINCHONA PLANT DISCOVERED BY MR. BROUGHTON.

Read the following Despatch from the Right Honourable the Secretary of State for India, (Public,) to His Excellency the Right Honourable the Governor in Council, Fort St. George, dated India Office, London, 26th September 1869, No. 29:—

I have received and considered in Council your Excellency's despatch, dated the 27th of July 1869, (No. 44,) forwarding Mr. Broughton's report on the discovery of a very valuable variety of the Cinchona plant, raised from seeds collected in the Loxa District, which yields a larger per-centage of quinine than any other kind that has hitherto been analyzed.

2. Mr. Broughton's very important discovery shows the great value of the services of an intelligent Chemist residing on the spot, with opportu-

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nities of watching the habit of the plants, the barks of which it is his duty to analyze. I perceive that your Government concurs in Mr. Broughton's opinion that a sufficient number of acres has now been planted with the *C. Succirubra*, and that the remaining area should be devoted to the careful cultivation of this precious Loxa species, and of the *C. Calisaya*, and varieties of *C. Pituyensis*, recently obtained from New Grenada. I presume, therefore, that immediate action will be taken in this matter, and there is no reason why the area to be planted should not be slightly increased beyond the extent already sanctioned, if such a course is found to be desirable.

3. It might be useful if specimens of the parts of Mr. Broughton's valuable Loxa variety were accessible in this country; and indeed it is desirable that a complete series of the different parts of all the Cinchona species grown on the Neilgherries should be preserved in this office. I have to request, therefore, that Mr. McIvor may be directed to dry specimens of the leaves, flowers, fruit, and bark of each species and variety of Cinchona, and that the collection may be forwarded to me.

ORDER THEREON, 9th November 1869, No. 2,936.

Ordered to be communicated to the Commissioner of the Neilgherries with reference to the Proceedings of Government, dated 19th June 1869, No. 1,740.

2. Referring to the suggestion made in paragraph 2 of the despatch, the Government have requested the Commissioner in their Order of this day's date, No. 2,935, to make a moderate provision in the Budget for 1870-71 for the extension of the plantations, in order to cultivate the new variety of the Cinchona tree discovered by Mr. Broughton.

3. Mr. Breeks will desire Mr. McIvor to make a complete collection of the leaves, flowers, and bark of each species and variety of Cinchona as requested in paragraph 3 of the despatch, and forward it to Government for transmission to the Secretary of State.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

Read the following Proceedings of the Government of India, Financial Department, (Expenditure, Income-tax,) dated Fort William, 26th November 1869, No. 2,785 :—

RESOLUTION.—In continuation of Resolution, No. 1,888, dated the 24th March 1869, the Governor-General in Council is pleased to prescribe the following rules with reference to Act XXIII of 1869, (to enhance the duties leviable under the Indian Income-tax Act.)

2. The proviso in Section 3 of the new Act is meant to meet the case of persons assessable under Part II of Act IX of 1869, the rate of whose chargeable income is higher during the last four months of the year than it was in the previous two months. For instance, if an officer of Government should return from furlough in Europe in the month of November or subsequently, his salary for November, December, January, and February, chargeable in the respective succeeding months would, under Section 2 of the new Act, be assessable at two-and-a-half per cent.; and this would, in his case, be the entire salary chargeable for the six months, commencing on the 1st day of October, if his furlough allowances were paid out of India. Hence, under Section 3, he would be entitled to a refund of the excess over two per cent. Similarly, an officer promoted to higher salary in November or subsequently would be entitled to a refund under that section.

3. It will be most convenient to make this refund by reducing the assessment in such cases on the salary payable in March 1870. The assessing officer will then be able to ascertain the entire salary chargeable during the six months commencing on the 1st day of October 1869, and the amount of duty at two per cent. thereon. He will thus be able to adjust any excess over that amount by a diminution of the assessment in March, or, if necessary, by a re-payment.

4. The second clause of Section 2 is meant to provide for cases in which the assessments are made in December, before the assessing officer was informed of the provisions of the new Act.

5. The same remarks apply to annuities and pensions assessable under Part II.

6. The Collector should at once bring to the notice of the proper officer of every Company assessable under Part III that such Company is liable to a further duty equal to half the amount to which it was liable under that part, and that this further duty is payable on the 1st December 1869.

7. Wherever a notice has been already served under Part IV, Section 16, the Collector will, under Section 6 of the new Act, serve a supplementary notice in the following form :—

Supplementary Notice under Section 6,
Act XXIII of 1869.

No.

To

Date.

Whereas you were served with a notice under Section 16 of the Indian Income-tax Act requiring you to pay Rs. , you are hereby required to take notice that, under Section 5 of Act XXIII of 1869, you are liable to a further duty of Rs. , payable within fifteen days of the service of the present notice. A receipt will be granted at *(place)* on *(time)* by *(name of officer)* to whom payment should be made.

(Collector's Signature.)

8. If a notice has not been already served on any person liable under Part IV of the Indian Income-tax Act, the form of notice prescribed in the Resolution of the 24th March last will be used, care being taken to enter the enhanced amount in the fifth column of that form.

9. The form of receipt prescribed in the above-quoted Resolution requires no alteration; but if in any case a receipt has already been granted, the term "supplementary receipt" should be used.

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10. A register of supplementary notices should be kept in the following form:—

Register of Supplementary Notices under Section 6 of Act XXIII of 1869.

Number of supplementary notice, with date of service.	Number of original notice.	Name of person assessed, with name of trustee or agent, if any.	Amount of additional duty.	Amount of fine under Section 25 of Act IX of 1869 in respect of additional duty.	Date of payment of additional duty or fine, with number of receipt.
1	2	3	4	5	6

Ordered that the above Resolution be published for general information in the *Gazette of India*, and communicated to the several Departments, Governments, and Administrations, and to the several Accountants-General, and Deputy-Accountants-General in independent charge, for information and guidance.

2. Also to the Comptroller-General of Accounts for information and guidance.

(Signed) R. B. CHAPMAN,
Offg. Secy. to the Govt. of India.

ORDER THEREON, 14th December 1869,
No. 3,174.

Communicated to the Board of Revenue in continuation of the Proceedings, dated 13th April 1869, No. 996, for their information and for immediate communication to all Collectors and the Commissioner of the Neilgherry Hills for their guidance.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

Read the following Proceedings of the Board of Revenue, dated 2nd December 1869:—

Read the following letter from the Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated Cuddalore, 20th November 1869, No. 277.

I have the honour to report, for the information of the Board and Government, that heavy rain has fallen very generally throughout this district during the last month, and the quantity gauged at my own office since the 25th October is noted below:—

Dates.	Inches	Tenths.
25th and 26th October ...	...	...
27th do. ..	1	...
28th do. ...	1	$4\frac{3}{4}$
29th do. ...	..	$3\frac{1}{2}$
31st do. ...	6	$5\frac{1}{2}$
1st November ...	...	$5\frac{1}{2}$
2nd do. ...	...	7
3rd. do. ...	1	$7\frac{1}{2}$
4th do. ...	4	5
5th do. ..	1	3
6th do. ...	1	$7\frac{1}{2}$
7th do. ...	2	$4\frac{1}{2}$
11th do. ...	...	$3\frac{1}{2}$
13th do. ...	...	$6\frac{1}{2}$
15th do. ...	2	$4\frac{1}{2}$
16th do. ...	4	...
17th and 18th do. ...	...	...
	29	$8\frac{1}{4}$

2. Prior to this, all river-fed sources of irrigation had received a full supply for the season, and my only fear has been that tanks and reservoirs would have burst their banks; but happily as yet nothing of the kind, to any material extent, has been reported, owing to timely precautions to let off all surplus water. Rain-fed tanks very generally throughout the district have also received a full supply, and the season altogether promises to be one of the most propitious we have had for a series of years for both wet and dry cultivation.

3. It will be seen that the rainfall in less than a month has nearly equalled the average amount in past years, and, if we only have a renewal of showers in the beginning of January, I am sanguine that there will be a very large increase of revenue in the current Fusly year, and that remissions will be almost unknown.

4. This sudden propitious change in the prospects of the coming season throughout this part of the country cannot be over-estimated, and it is only a Revenue Officer perhaps who can fully enter into the relief and blessing attending such a change after the anxiety and distress occasioned by a succession of bad seasons; and I have thought the altered position of the year's prospects were a fitting subject for a special report, for if, as I believe, these prospects are much the same throughout the Presidency, the Board and Government will not fail to share in those feelings of gratitude and thankfulness, which every head of a province must experience on witnessing his district suddenly turned from a desert into a garden, and promised abundance and plenty where only shortly before all looked gloomy and threatening.

5. Although the past few months or since April have been somewhat anxious to me, yet it is gratifying to find that all my calculations and anticipations, recorded in my letter to the Board of the 13th February last, No. 43, (*vide* Board's

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Proceedings, No. 1,596, of 9th March,) have proved correct and been fully realized. The retail prices of all grains have averaged throughout from 30 to 35 per cent. cheaper than in Fusly 1276-77, and there has been neither suffering nor distress in any part of the district calling for special measures of relief, so that my expectations as to the real condition of the people, and my knowledge of the resources of the district available to meet any pressure, as given in paragraphs 10, 11, and 12 of that letter, have all been borne out—a result which has been very satisfactory, however great my anxiety and watchful oversight may have been in the intervening period as the season of drought progressed.

Submitted for the information of Government.

ORDER THEREON 14th December 1869, No. 3,173.

Ordered to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,

Acting Under-Secretary to Government.

PLAN OF NEW JAIL FOR PALAMCOTTAH.

Proceedings of the Madras Government, Judicial Department, 15th December 1869.

Read the following papers:—

From Lieut.-Colonel W. J. WILSON, Inspector-General of Jails, to the Secretary to Government, Public Works Department, Fort Saint George, dated Ootacamund, 5th August 1869, No. 92.

I have the honour to forward plans and estimates for a new District Jail at Palamcottah, in the District of Tinnevelly. Accommodation exclusive of that in hospital has been provided for the undermentioned classes, viz.:—

Male convicts	120
„ under-trial	18
Boys	6
Female convicts	16
„ under-trial	4
Male debtors	12
Female „	4
Total...	180

Three solitary cells.

Two cells for condemned prisoners.

2. As the number of male prisoners under trial has on several occasions exceeded thirty, and the number of boys has not been more than three, I propose that the under-trial block should consist of four wards, viz., three wards of under-trial prisoners, two to contain twelve each, and one to contain nine; the fourth ward to be for four boys. I would exclude the cells for condemned prisoners from the body of the jail and add them to the block of solitary cells beyond the circle. With these modifications the provision for the various classes of prisoners will correspond with their average number during the last four or five years with the exception of that for female debtors, none of which classes appear to have been received into jail at Tinnevelly for several years past.

3. The undermentioned alterations in the construction of the different buildings appear desirable:—

I. The dimensions of the wards ought to be modified so as to allow 40 superficial and 600 cubic feet per prisoner, instead of 37 superficial and 660 cubic feet as provided.

II. The window sills in the wards appear to come within two feet of the floor. I would allow 2½ feet.

III. The doors ought to open on hinges at one side. Iron doors revolving on the centre are not required.

IV. The shutters to protect the windows should be placed outside.

V. If not objectionable on account of the extra expense, I think it would be preferable to exclude the night conveniences from the wards. A recess about eight feet high and six feet square, with a grated aperture on each side for ventilation, might be built between any two windows at the back of each ward.

VI. Eave ventilation ought to be given in every block.

VII. WOMEN.—A separate workshop is not required for the women. If a verandah about nine feet broad with a parapet wall in front three feet high is added to the front of the block, it will answer the purpose. The accommodation as per plan is a single block consisting of a large central ward for convicted females, and a small ward at each end, one for under-trial females and the other for debtors, the latter being divided from the other part of the building by palisading. The daily average number of under-trial females has been about two, and there have been no female debtors at all of late years; but I have not proposed any modification in the plan of this building with the exception of the addition of a verandah and of such alteration in the dimensions as will give the standard allowance of space, because the ward designed for female debtors will be found useful when separation may be required, and for the temporary accommodation of long-sentenced women while their time for appeal is pending. A separate building may be erected for the under-trial women, but their number is so small that this scarcely appears necessary.

VIII. HOSPITAL.—The building shown in the plan provides for the reception, under the same roof, of males and females, and of persons suffering from contagious diseases. I recommend that a hospital for women should be built in their own compartment, and that a separate building for persons attacked by contagious diseases should be erected near the hospital. Each hospital ought to have a verandah all round.

IX. SOLITARY CELLS AND CELLS FOR PRISONERS CONDEMNED TO DEATH.—The dimensions of these should be increased so as to give 100 superficial and 1,000 cubic feet per cell. The doors of the cells for condemned prisoners ought to be of open iron grating, so that the inmates may be kept under observation. Those of the solitary cells should be of wood of a similar pattern to those at the Vellore Central Jail.

X. LATRINE FOR MALES.—That shown in the plan measures 81 × 44 feet, and is of the same description as those sanctioned for Central Jails. I enclose a rough plan of a latrine of a more simple description measuring 60 × 31½ feet, which will be less expensive and equally convenient.

XI. LATRINE FOR FEMALES.—That shown in the plan measures 25 × 18 feet. I enclose a rough

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plan of a smaller building measuring 16 × 10 feet inside, which is quite large enough. One of a similar size may be built in the hospital compartment. The trough in the latrine at the Native Jail at Ootacamund is sunk below the surface of the ground, and, as it has answered the purpose remarkably well for the two years during which it has been used, and as troughs of this description are probably cheaper and more easily constructed than those raised above the ground, I recommend them for adoption at Tinnevelly.

XII. A request was recently made by a European Head Constable to the effect that the two rooms might open into each other in order to improve the ventilation. If an arch can be turned in the dividing wall it will answer the purpose.

XIII. No basement ought to be less than two feet.

4. The undermentioned additional buildings seem to be required:—

I. Quarantine Block.—The average number of male convicts and under-trial prisoners admitted during 1868-69 averaged respectively thirty-four and seventeen per mensem, but the number varied considerably in different months: for example, the smallest number of convicts admitted during any one month was fifteen and the greatest seventy-six, the smallest number of under-trial prisoners was three and the greatest thirty-nine. I have consequently found some difficulty in determining what amount of quarantine accommodation ought to be provided. The block now proposed consists of four wards of the same dimensions as those of the new Subsidiary Jails—three wards each to contain six persons, and one ward to contain three persons.

II. Separate hospital for women.

III. Separate hospital for persons afflicted with contagious diseases.

5. I herewith submit a block plan on the same scale as that prepared by Colonel Wilkieson, showing the additional buildings, and also altering the positions of the hospitals, of the wards for females, of the latrines, of the solitary cells, of the dead-house, and of the debtors' ward. The hospital and barrack for women, if built as shown in the original plan, will be too near the main wall, and I, therefore, propose to take in additional ground to the extent of 150 feet and to erect the buildings for the sick and for the women thereon. The quarantine wards and general latrine ought to be as far removed from the other buildings as possible, and I have shown them in opposite corners of that end of the enclosure next to the entrance. The debtors' ward and the block of cells have been placed as far from the other buildings as the space will admit of. The former might be moved nearer the hospital, but that would interfere with the power of extending the convict barrack marked A., which power it is desirable to retain. As the erection of the quarantine and debtors' wards beyond the outer wall of the jail would involve additional expenditure, I have proposed to place these buildings inside. Three bathing cisterns will be required—one for the general body of prisoners, measuring 18 or 20 × 8 × 2½ feet inside; one for the hospital, and another for the women, each measuring 8 × 4 × 2½ feet inside.

6. The site selected is about one-and-a-half miles from the old jail in the cantonment of Palamcottah. It stands high. The soil is red laterite, and good water is procurable. The north-east wind prevails from the latter part of November until the end of March. Early in June the south-west monsoon sets in, but, the direction of the wind being affected by the range of ghauts, is generally due west at Palamcottah until October. In April, May, October, and the early part of November, the wind is variable. I have, therefore, shown the hospital in the south-western corner of the enclosure.

7. I also forward a letter from the Officiating Superintending Engineer requesting permission to commence the preparation of materials for the enclosure wall and other buildings.

8. A gang of 150 convicts to strengthen the working party is under orders to leave Madura so soon as the huts are ready.

Referred to the Judicial Department.

(Signed) C. A. ORR, Colonel, R. E.,
Secretary to Government, P. W. D.

Fort Saint George, 29th August 1869.

Referred to the Acting Sanitary Commissioner for his remarks, which he is required to submit at an early date.

(Signed) H. E. STOKES,
Acting Under-Secretary to Government.

Fort Saint George, 23rd August 1869.

From Captain H. Tulloch, R. E., Officiating Sanitary Commissioner for Madras, to the Chief Secretary to Government, Fort Saint George, dated Madras, 11th September 1869, No. 3018.

In reply to your Acting Under-Secretary's docket on letter, No. 92, of the 5th ultimo, addressed by the Inspector-General of Jails to the Secretary to Government, Department of Public Works, concerning the proposed District Jail at Palamcottah, I have the honour to submit the following observations.

2. I do not propose to enter into the question as to the number of the various classes of prisoners for whom accommodation should be provided, because the Inspector-General of Jails is obviously the most competent officer to settle that point. My remarks will be confined to the buildings, and to the nature of the accommodation which they would afford. I will consider the alterations proposed by the Inspector-General in the order in which he has placed them.

The superficial area for each prisoner should be 40 feet, and the cubical space 650 feet.

The window sills may be raised half a foot from the floor as proposed by Colonel Wilson.

Considered from a sanitary point of view, it does not much matter whether the door works on a pivot in the middle or on hinges at the side. The latter arrangement, because it is the ordinary one, is the more convenient.

I agree with Colonel Wilson that the shutters to protect the windows should be on the outside.

There are grave objections to the night "conveniences" being placed in the wards. The ordure must contaminate the atmosphere in which the prisoners are sleeping, and pre-dispose them to

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sickness. It is not quite clear to me what kind of recess the Inspector-General of Jails proposes. All that is required is a small compartment cut off from the ward, but to which access could be had through a door. The room ought to be thoroughly ventilated, so that the gases from the urine and night soil might escape at once to the atmosphere outside the building.

All the terraced buildings should have apertures for ventilation at the top of the walls, but these will not be required in those buildings which have pent roofs and ridge ventilators.

The hospital for females must be a separate building from that in which males are treated, and the contagious wards in connexion with each must be isolated. Although verandahs may be dispensed with in most of the other buildings, they are indispensable in the hospitals. The shade which they afford is most grateful to convalescent patients, and, indeed, to all who are not compelled to stay in doors.

Prisoners who are undergoing solitary confinement or condemned to death, and who are, therefore, obliged to be kept to themselves, should each have the superficial area and the cubical space allotted to them which is proposed by the Inspector-General of Jails.

I prefer Colonel Wilson's design for the latrines, but it will be necessary to add a ridge ventilator right along the whole length of each building. It is immaterial whether the trough is placed below or above the level of the ground. I am opposed to the men's and women's latrines being joined together. They should be separate buildings.

I perfectly agree with the Inspector-General of Jails, who recommends that no basement ought to be less than two feet from the ground. The health of men is so much affected by damp, that we cannot be too careful in trying to keep all buildings dry.

3. The extra buildings which are not provided for by the Public Works Department, but which are recommended by the Inspector-General of Jails, are quarantine wards, separate hospital for women, and separate hospital for contagious diseases. It will be seen that in paragraph 2 of this letter I have already urged that the two latter buildings be provided. The necessity for quarantine wards need not be pointed out by me, as the attention of the Government of India has already been drawn to this subject.

4. The Inspector-General of Jails has recommended three wards, each to hold six persons, and one ward to hold three persons. Thus accommodation would be secured for twenty-one persons altogether. But the Government of India seem to have approved of the suggestions of their Sanitary Commissioner, who is opposed to prisoners on first joining a jail being placed together. It is stated in the remarks of the Government of India, (*vide* Proceedings of tho Madras Government, Judicial Department, No. 1325, of 13th August 1869,) "instead of fresh arrivals being put in barracks calculated to hold six or eight persons, it would be far better to put each individual into a separate cell, so far as such a disposition may be practicable without serious expense." From the general tenor of their remarks, moreover, it is clear that it is not contemplated that so many as twenty-one solitary cells should be built in a single jail, such as the one now under consideration, in addition to those required for purposes of punishment. Nor, on the other hand, are the principles laid down for guidance sufficiently precise to enable me to fix on the exact number of cells that should be erected. I would recommend a dozen quarantine cells as a preliminary necessity. If afterwards more should be required, they can be constructed.

5. Under these circumstances it will, of course, be necessary at the same time to make use of, to the utmost, every building in the jail that can conveniently be used for segregating prisoners on their first arrival at the jail; otherwise it will be impossible to accommodate the required number.

6. It occurs to me that a great deal of expense may be saved by not admitting into jail more prisoners at a time than there is quarantine accommodation for. Before prisoners are sent from one station to another, the Superintendent of the Jail to which they are to proceed should be communicated with, and it should be ascertained from him whether he can receive them or not. No doubt, if proper arrangements are made by the officers concerned, the necessity for a large number of separate quarantine cells may, to some extent, be obviated.

7. Regarding the general arrangement and positions of the different buildings in the proposed jail, I would adopt the plan proposed by the Inspector-General of Prisons, but with certain modifications.

8. There is no reason why the solitary and condemned cells block, the latrines, the quarantine wards, and the hospitals should not also all radiate towards the centre of the jail. Letting alone the advantages of easier circumspection that would be secured by this arrangement, it would be beneficial from a sanitary point of view. The buildings in this position would interfere less with the perflation of the air towards the main wards than if placed as proposed in the plan.

9. I observe that the contagious diseases' wards attached to the male hospital have been placed due west of the female hospital, and it is stated on the plan that west winds prevail from June till October. It is most necessary that these wards should be so situated that no prevailing winds should blow over them towards any building in the jail. Obviously the proper place for them is the south-east corner of the square. By placing the male hospital to the east and the female hospital to the west, the contagious diseases' ward will be situated to the west of all the other buildings, and they need not be removed far from the male hospital, of which they will still form an integral part.

10. In a previous part of this letter I assumed that the quarantine wards were to be within the jail walls; but there can be no question about the advisability of putting them outside if there are no insuperable objections, other than sanitary, to this being done. A little additional expense should not be considered when the health of all the convicts depends so much on the prevention of diseases being imported from other stations.

11. It is of great importance that all the water used for bathing, washing, and cooking purposes should be conveyed away from the precinct of the dwelling as rapidly as possible, and I would strongly advocate its being used on ground which might conveniently be converted into a kind of kitchen garden to supply the prisoners with vege-

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tables. On the same land might be used, with great profit, all the earth that had been converted into poudrette within the jail walls. I am decidedly opposed to the burial of excreta, however deep the pits may be dug. The conversion of excrement into food seems to me at once the most scientific mode of dealing with this question, and the one most likely to produce the best sanitary results. Excrement buried is merely an evil put out of sight, but not the less likely on that account to do mischief. But excrement turned into food is foul matter robbed of all its power to do harm.

12. The surface drainage should not be intercepted any where near the jail, but should be allowed to flow right away to the natural outfalls in the neighbourhood.

13. I quite agree with both the Superintending Engineer and the Magistrate that the jail should be clear of all nuisances and encroachments, and I strongly advocate that the eighty-two acres of ground proposed to be taken up be purchased outright. The jail will then stand with an open space around it, and not be liable to contamination from without.

14. The points not referred to by the Inspector-General of Jails, but which will require attention, are as follow :—

JAILOR'S QUARTERS.—Ridge ventilation should be put up over the quarters, the godown, and the privy.

QUARTERS FOR POLICE GUARDS.—A window is required in the front wall of each room, and a ridge ventilator right along the entire roof. The cross walls separating the quarters from each other should be reduced to 3½ feet in height, otherwise they will interfere with the perflation of the air.

QUARTERS FOR THE EUROPEAN HEAD CONSTABLE.—A ridge ventilator is required to the quarters, the cook-room, and the godown. The two rooms should communicate with each other through a door or an open archway. The floor should be two feet from the ground.

DRESSER'S QUARTERS.—Ridge ventilator is required: a window in each side wall of the main room would be a great advantage, and a window in the side wall of each of the other rooms would make them also much healthier. Floor should be two feet from the ground.

DEPUTY JAILOR'S QUARTERS.—Ridge ventilation is required to the quarters and the out-office. The floors should be two feet from the ground.

WARDERS' HUTS.—Some kind of ventilation in the roof will be required unless pan-tiles only are used, in which case the ventilation may be dispensed with. The cross walls separating the huts are much too high. The floors should be raised to two feet above the ground, and application of poudrette and sewage to cultivation.

15. In conclusion, I beg to add that much saving of time would be effected if, before detailed plans and estimates for large buildings were prepared, a pencil outline of the proposed works were, in the first instance, forwarded for remarks. All the preliminary points could then be settled before the Engineer proceeded to details, which, under these circumstances, would not probably require any alteration.

ORDER THEREON, 15th December 1869, No. 1984.

The estimate for the proposed new District Jail at Palamcottah, in the District of Tinnevelly, for the accommodation of 180 prisoners, amounts to Rupees 92,000, and provides for the buildings, &c., described below :—

	RS.	A.	P.
Enclosure Wall	18,200	0	0
Store and Office	2,730	0	0
Six Wards	18,490	0	0
Three Solitary Cells	1,100	0	0
Work-shed for Males ...	2,670	0	0
Do. for Females ...	475	0	0
Granary	1,760	0	0
Cooking-shed	1,580	0	0
Do. for the Hospital...	640	0	0
Cooking-shed for Females...	470	0	0
Latrine for Males	4,380	0	0
Do. for Females	690	0	0
Hospital	4,880	0	0
Do. Latrine	340	0	0
Leper Cell	900	0	0
Palisading	5,765	0	0
Three Wells	707	0	0
Women's Lavatory with seven walls	195	0	0
Dead House	335	0	0
Entrance Gate	330	0	0
Guard Room and Office ..	1,480	0	0
Jailor's Quarters	3,370	0	0
Cooking-shed for do. ...	555	0	0
Privy for do.	205	0	0
Deputy Jailor's Quarters...	630	0	0
Quarters for European or East Indian Head Constable	965	0	0
Cook Room for do.	290	0	0
Five Warders' Huts ...	1,485	0	0
Two Head and eight Deputy Constables' Huts ...	3,225	0	0
Latrines for do.	50	0	0
Cooking-shed for Jailors' Quarters	160	0	0
Dresser's Quarters... ...	980	0	0
Drainage	400	0	0
Extra Establishment ...	2,410	8	11
Scaffolding, and Sundries...	3,497	7	1
Pay of Police Guard ...	3,600	0	0
Value of land	2,060	0	0
	11,968	0	0
	92,000	0	0
Deduct value of convict labour...	10,000	0	0
Total...	82,000	0	0

2. The Inspector-General of Jails suggests that in the construction of the several buildings the following alterations should be made, viz. :—

I. The dimensions of the wards to be modified so as to allow 40 superficial and 600 cubic feet per prisoner.

II. The sills of the windows in the wards to be placed two-and-a-half feet above the floor.

III. The doors to open on hinges at one side.

IV. The window shutters to be fixed outside.

V. A recess about eight feet in height and six feet square, with a grated aperture on each side, to be built at the back of each ward.

VI. Eave ventilation to be provided in every block.

VII. A separate workshop for females to be dispensed with.

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VIII. But a verandah about nine feet broad with a parapet wall, three feet high, to be added to the front of the female ward, and the dimensions of the ward to be altered, so as to allow of the standard superficial and cubic space of 40 and 600 feet respectively.

IX. Each hospital to be provided with a verandah all round.

X. The dimensions of the solitary cells and cells for prisoners condemned to death to be increased so as to give 100 superficial and 1,000 cubic feet per cell.

XI. The doors of the cells for condemned prisoners to be of open iron grating.

XII. The latrine for males to be built in accordance with the rough plan submitted.

XIII. The latrine for females to be also according to the rough plan.

XIV. A similar latrine to be built in the hospital compartment.

XV. The troughs in the latrines to be sunk below the surface of the ground, as in the Native Jail at Ootacamund.

XVI. An arch to be turned in the partition wall between the rooms in the Head Constable's quarters.

XVII. All basements to be not less than two feet.

3. The Inspector-General also considers the following additional buildings to be necessary, viz. :—

I. Four quarantine wards of the dimensions of the new Subsidiary Jails.

II. Separate hospital for women.

III. Separate hospital for persons afflicted with contagious diseases.

IV. Three bathing cisterns—one 18 or 20 × 8 × 2½, and two 8 × 4 × 2½, and he submits a block plan showing the additional buildings and the alterations proposed in the positions of the hospital, wards for female, latrines, solitary cells, dead-house, and debtors' ward.

4. As the hospital and ward for women will, if built as shown on the original block plan, be too near the main wall, the Inspector-General proposes to take in 150 feet of additional ground, and to erect the buildings for the sick, and for the women thereon. He also proposes, with a view to avoid additional expenditure, to place the debtors' wards inside of the main wall.

5. The Officiating Sanitary Commissioner, Captain Tulloch, agrees with the Inspector-General in the alterations and additions which he has proposed. He would, however, with reference to the remarks of the Sanitary Commissioner with the Government of India, recommend that a dozen quarantine cells be erected, instead of the four wards proposed by the Inspector-General.

6. Captain Tulloch thinks that a great deal of expense may be saved by not admitting into a jail more prisoners at a time than there is quarantine accommodation for, and he suggests that before prisoners are sent from one jail to another it should be ascertained from the Superintendent of the Jail to which they are to proceed, whether he could receive them or not.

7. Captain Tulloch would adopt the block plan submitted by the Inspector-General of Jails with certain modifications, viz., that the solitary and condemned cells, blocks, the latrines, the quarantine wards, and the hospital should all radiate towards the centre of the jail; that the contagious diseases' wards should be placed in south-east corner of the square, the male hospital being placed to the east, and the female hospital to the west; and that the quarantine wards should be placed outside of the jail enclosure.

8. Captain Tulloch further suggests that the surface-drainage should not be intercepted anywhere near the jail, but be allowed to run to the natural outfalls;

That ridge ventilation should be provided for the Jailor's quarters, the godown, and privy;

That a window should be inserted in the front wall of each room of the Police guards, and a ridge ventilator provided along the entire roof. The cross walls separating the quarters from each other to be reduced to 3½ feet in height;

That ridge ventilation be provided to the quarters of the European Head Constable; Dresser, and Deputy Jailor;

That some kind of ventilation will be required in the Warders' huts if pan-tiles are not used;

That the cross walls separating the huts should be reduced in height;

And that poudrette and sewage should be applied to cultivation.

9. The Governor in Council approves generally of the suggestions made by the Inspector-General of Jails and the Officiating Sanitary Commissioner, and directs that the necessary instructions be issued in the Public Works Department.

10. The Governor in Council further directs that the recess for night use suggested by the Inspector-General of Jails be on the plan adopted in the Central Jail at Bangalore, which was approved of for all Central and District Jails in this Presidency in G. O., dated the 1st September last, No. 1,445; that a separate ward be provided for women under trial; and that the quarantine wards be constructed *outside* of the jail enclosure.

11. The Governor in Council does not see the necessity of having separate quarantine cells, as suggested by the Officiating Sanitary Commissioner. The quarantine building is merely to keep prisoners under inspection. As soon as there is any sign of sickness they would be removed to the hospital.

12. Paragraph 6 of the Officiating Sanitary Commissioner's letter will be referred to the Inspector-General of Jails for his remarks, and paragraph 15 for consideration in the Public Works Department.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

CIRCULAR ORDER OF CALCUTTA HIGH COURT ON ACT XX OF 1866, OR THE NEW REGISTRATION ACT.

To all Civil Judges, dated Calcutta, the 19th June 1866.

In supercession of their circulars as per margin, the Court are pleased to issue the following instructions regarding the new Registration Act (XX of 1866), to which they request the immediate attention of all Civil Judges of whatsoever grade :—

No. 5,	dated	31st March 1865.
„ 13	„	26th June „
„ 21	„	5th Sept. „
„ 33	„	22nd Dec. „
„ 2	„	2nd Feb. 66.

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2. Sections 41, 42, and 43, which prescribe the duties of Civil Courts in certain cases decided by them, are quoted below for easy reference. The difference between their provisions and those of Sections 43 and 45, Act XVI of 1864, should be carefully noted, so that no mistakes may occur in giving effect to the present law.

Section 41.—When any Civil Court shall, by a decree or order, declare any document relating to immoveable property which shall have been registered under this Act to be invalid, or when any Civil Court shall pass a decree or order affecting any such document, and such last-mentioned decree or order shall create, declare, transfer, limit, or extinguish any right, title, or interest under such document to or in the immoveable property to which it relates, such Court shall cause a Memorandum of the decree or order to be sent to the Registrar within whose district the document was originally registered.

Section 42.—When any Civil Court shall, by a decree or order, create, declare, transfer, limit, or extinguish any right, title, or interest of any person to or in any immoveable property situate in any part of British India in which this Act shall operate, such Court shall cause a Memorandum of the said decree or order to be sent to the Registrar, or to every Registrar within whose district the whole or any part of such immoveable property is situate, and such Memorandum shall, so far as may be practicable, describe the property in manner required by Section 21.

Section 43.—The costs of and attending the registration under Sections 41 and 42 of any Memorandum of a decree or order shall be costs in the cause, and shall be paid by the Court to the Registrar or to such other person, and in such way as the local Government shall direct in that behalf.

3. The main difference between Section 41 of the present and Section 43 of the repealed law is, that it is now required that Memoranda of decrees or orders affecting registered documents shall be sent to the officer generally known as the *District Registrar*, that is, "the Registrar within whose district the document was originally registered:" whereas under the now repealed law such Memoranda used to be sent to the office in which the document was originally registered, which might be, and, in most cases, no doubt was, the office of a Sub-Registrar.

4. A somewhat similar difference will be found on comparing Section 42 of the present with Section 45 of the repealed law. The Memoranda of decree or orders affecting immoveable property should be sent, not as heretofore to both District and Deputy or Sub-Registrars, but only to the District Registrar, or to every District Registrar within whose district the whole or any part of such immoveable property is situate. It should be noted that a Memorandum sent under Section 42 should, as far as practicable, describe the property in the manner required by Section 21. The Court trust that they may receive no complaint of a non-observance of this provision of the law; for, unless the Memorandum contains a proper description of the property, the purposes for which it is required *are entirely defeated, and the Memorandum is useless.*

5. Whenever a judgment is recorded *in English*, the Memorandum to be sent to the office for registration should be invariably drawn up in that language; for it is evident that the *substance of decrees or orders* passed by a Judge, of the nature of those entered in such Memoranda, *can be best expressed in the language in which the original judgments were delivered.*

6. Subordinate Courts should keep a copy of every Memorandum sent to the District Registrar, and the High Court is pleased to direct that, in forwarding the records of appealed cases, all Courts of first instance, and all subordinate Courts of Appeal, shall attach to the judgment appealed against a copy of the Memorandum (or Memoranda) sent in for registration.

7. In connection with Section 43, which it will be observed is an entirely new provision of the law, the High Court desire to point out that the costs of registration should be entered in every decree or order registered under Sections 41 and 42. The costs to be charged in the decree or order should, in accordance with the schedule sanctioned by His Excellency the Governor-General in Council, be calculated in the following manner:—

"The costs to be paid on Memoranda sent by the Civil Courts under Section 41 should be estimated at Rupees 2 in each case.

"The costs to be paid on Memoranda of decrees sent by the Civil Courts under Section 42 should be estimated on the value of the property affected by the decree according to the scale given in Schedule A., *viz*.:—

		Fee. R.	A.
Where the value shall not exceed	Rs. 25	0	4
Extract from the Schedule of Fees under the Indian Registration Act XX of 1866 sanctioned by Government.	Exceeding Rs. 25, but not exceeding Rs... 100	0	8
	„ 100 „ ... 500	1	0
	„ 500 „ ... 1,000	1	8
	„ 1,000 „ ...4,000	2	0
and for every further Rs. 4,000 or part thereof...		1	0

(NOTE.—Where Memoranda have to be sent to more than one District Registar's office, the costs calculated as above shall be forwarded by the Court to the office in the District in which the principal part of the property affected by the decree is situate, and Rupees 1 shall be forwarded to each of the other Offices to which Memoranda are sent.)

8. It will be observed that, for registering a Memorandum under Section 41, Rupees 2 only will be charged as costs in the decree or order, whereas for a Memorandum under Section 42 a calculation will be necessary under the scale quoted in the foregoing rule.

9. To illustrate the mode of dealing with a Memorandum under Section 42 of a decree in which the property is valued at Rs. 23,000 and is situated in Moorshedabad, Rajshaye, and Nuddea, the greater portion of the property being in the last-named district, the Court would point out that the charge for registration would be calculated in the following manner:—

	R.	A.
For the first 4,000	2	0
For four successive sums of 4,000 ...	4	0
For a broken portion	1	0
For registration in Moorshedabad and Rajshaye	2	0
Total...	9	0

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The greater portion of the property being situated in Nuddea, the full fee, viz., Rs. 7, would be credited to the Registration Fund of that district, the sum of Rs. 1 being credited to the funds of Moorshedabad and Rajshaye, to the Registrars of which districts Memoranda should also be sent.

10. Civil Courts should bear in mind such charges, and, at the time of the execution of any such decree or order, should be careful to see that the Government dues are deducted from the monies realized in execution before any payment is made to the judgment-creditor. The dues should be deposited in Court, and as the local Government has as yet issued no orders regarding the payment of such monies, they should be made over, without delay, to the District Registrar or Registrars as may be. The High Court take this opportunity of impressing on all Judges the necessity for guarding against any loss by fraud or embezzlement.

11. Forms for the preparation of Memoranda under Sections 41 and 42 are hereto annexed. They are the same as those now in use, which were prescribed by Circular No. 5, dated 31st March 1865, except that an additional column has been added to show the amount of costs entered in the decree or order, which will, on execution of the said decree or order, be realized and paid into the credit of the Registration Fund.

12. * * * * *

13. With the view of ensuring the performance of the duties connected with the preparation of these Memoranda, the High Court request that every Civil Court, in according its judgment and decree or order in a case requiring registration, will enter the words "and a copy of the Memorandum A (or B), as required by Section 41 (or Section 42) of Act XX of 1866, shall be forwarded to the office (or offices) of the Registrar (or Registrars) of."

14 The Quarterly Statements required by para 8, Circular No. 5, dated 31st March 1865, should be forwarded as heretofore.

15. The High Court trust that, under the supervision of District Judges, the duty of preparing and forwarding Memoranda to Registration Offices has been regularly and punctually performed by all the Civil Courts. If it has in any instance been neglected, such neglect should be at once reported to the High Court, and measures should be taken, without delay, to bring up any arrears.

16. The High Court also desire to remind all Civil Judges that the provisions of Sections 41, 42, 43, Act XX of 1866, will apply only to decrees and orders passed subsequently to the 1st May 1866, those of a prior date being governed by the provisions of Act XVI of 1864, and that its terms apply to original as well as to appealed suits in which the decree or order passed concerns a registered document relating to immoveable property, or creates, declares, transfers, limits, or extinguishes any right, title, or interest of any person to or in any immoveable property situate in any part of British India in which Act XX of 1866 shall operate.

17. With a view of ensuring uniformity of practice, the Court is pleased to issue the following rules regarding the preparation of Memoranda of Registration :—

A. In decrees of a Court of first instance, dismissing a plaintiff's claim to any right, title, or interest to or in any immoveable property, no Memorandum need be prepared.

B. In decrees of an Appellate Court affirming the decree of a Court of first instance dismissing *in toto* a plaintiff's claim to or in immoveable property, no Memorandum need be prepared.

C. In decrees of a court of first instance decreeing either wholly or in part a right, title, or interest in immoveable property claimed by the plaintiff, a Memorandum must be prepared as to the property decreed: if on appeal the decree be affirmed without alteration or modification, no Memorandum need be forwarded.

D. In decrees of an Appellate Court in which the decree of the lower Court is modified or reversed wholly or in part, a Memorandum as to the part so modified or reversed should be prepared and forwarded.

E. When a decree of a Court of first instance declares a registered document relating to immoveable property invalid, or when such Court passes a decree affecting such document, and such decree shall create, declare, transfer, limit, or extinguish any right, title, or interest under such document to or in the immoveable property to which it refers or to any part thereof, a Memorandum should be prepared.

F. When a decree of an Appellate Court simply affirms the order of a Court of first instance on points relating to a registered document of immoveable property, no Memorandum need be prepared; but if such decree modifies or in any way varies or reverses that of the lower Court, a Memorandum relating to the portion of it so modified, varied, or reversed should be prepared.

G. When a decree has been passed by a Court of Justice in a suit instituted under Section 230 of Act VIII of 1859 in favour of the applicant as plaintiff either wholly or in part, a Memorandum should be prepared of the property decreed; and if, on appeal, that decree be wholly or partially varied or reversed, a Memorandum showing such variation and reversal should be prepared; but if the decree of the first Court be affirmed, no Memorandum is necessary.

H. When a sale of immoveable property made in execution of a decree has been confirmed by the Court under Sections 256 and 257 of Act VIII of 1859, a Memorandum of sale and confirmation should be prepared; and if, on appeal, that sale should be reversed, a Memorandum of such order of reversal should be prepared by the Appellate Court.

I. When, under Act X of 1865, probate is granted or refused by a District Judge of a will containing words sufficient to pass immoveable property, a Memorandum should be prepared.

J. If, on review of a judgment, a Court should set aside, modify, or in any way interfere with the decree as originally passed, then, if a Memorandum of the original decree has been forwarded to the proper Registration Office, a Memorandum should also be forwarded notifying the extent of the modification or reversal made by the order passed in review.

K. No Memorandum need be prepared of orders passed by any Court under Act XXVII of 1860, nor those passed under Act XIX of 1841, nor those under Section 2 of Regulation I of 1798, and Sections 7 and 8, Regulation XVII of 1806, nor of Act XL of 1858, nor of those passed under Section 15 of Act XIV of 1859, nor under Sections 246 and

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269 of Act VIII of 1859, nor in short of any order passed with reference to immoveable property in any of the miscellaneous cases entered in the Monthly Statement No. 2 which have not been explicitly mentioned in these rules.

18. It only remains for the Court to notice other portions of the Registration Act which affect the duties of Civil Judges.

19. The instruments of which registration is compulsory are described in Section 17, in connection with which Section 49 should be read. This section declares that "no instrument required by Section 17 to be registered shall be received in evidence in any civil proceeding in any Court, or shall be acted on by any public servant as defined in the Indian Penal Code, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act."

20. In Section 18 are mentioned the documents of which registration is not compulsory but optional. The privileges which attend the registration of the documents specified in Clauses 1, 2, and 3 of Section 18 are declared in Section 50, which enacts that such instruments duly registered "shall take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property, whether such instrument be of the same nature as the unregistered instrument or not." Section 48 further enacts, with reference to "all instruments duly registered under Act XX of 1866 and relating to moveable or immoveable property," that they shall "take effect against any oral agreement or declaration relating to the same property."

21. The time from which a registered document operates is specified in Section 47. The period of six years from the time when the cause of suit arose, is the limitation fixed by Section 51 of Act XX of 1866, and also by Clause 16, Section 16 of Act XVI of 1859, for suits to recover money lent or interest, or for the breach of any contract when such engagement in writing has been duly registered under the Act.

22. The mode in which Civil Courts are to enforce obligations which have been *specially* registered under Section 52 is laid down in Sections 53, 54, and 55, to which the High Court request the careful attention of all Civil Judges. The Court content themselves with observing that, contrary to the provisions of Act XVI of 1864, the record of agreement made by the parties needs to be signed only by the Registering Officer and the obligor.

23. Section 84 is also an important provision of the law, but it applies exclusively to the Courts of District Judges. The High Court expect that all cases of this description will be taken up and decided soon after the presentation of the petition, as it is a matter of importance that there should be no delay in such cases.

24. The Judges will open a new head in the Monthly Statement No. 2 for "Petitions under Section 83 of Act XX of 1866 to establish a right to have a document registered," and another for petitions under Section 53 of the same Act to enforce agreements recorded on specially registered obligations.

FORM A.

Serial No. of registered instruments, with Page, No., and Volume of Register in which it has been entered.	Names of parties to and No. of the suit, and whether an original or appeal suit.	Description of the immoveable property referred to in the instrument.	Effect of the decree or order on the instrument.	Date on which decree or order was passed.	Name and official designation of officer by whom the decree or order was passed.	Fees for Registration.
No. 1 of 1865, 1st January, 1865, Register of Hoogly.	Ram Dass *versus* Hurro Chunder Dass. Original Suit No. 16 of 1865 (or Appeal No. 120 of 1865.)	10 beegahs of land, Mouzah Shahpore, or Pergunnah Selimabad, Zillah Hooghly, bounded on the north by, &c., &c.	Declares it to be invalid.	10th July 1865.	Mr. John Smith, Judge of Hooghly.	

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FORM B.

Names of parties to and No. of the suits, and whether an original or appeal suit.	Description of the immoveable property affected by the decree or order.	Effect of the decree or order on the said property.	Date on which decree or order was passed.	Name and official designation of officer by whom the decree or order was passed.	Fees for Registration.
Obhoy Churn Mitter *v.* Kalidass Mitter, Original Suit No. 9 of 1865, (or Appeal No. 200 of 1865.)	Zemindary A in the Zillah of Hooghly.	Declares the adoption of the plaintiff to have been invalid, and declares the succession of the defendant to the said property as the nearest heir of the late proprietor under the law.	15th May 1865.	Baboo Rampershand Mookerjea, Principal Sudr Ameen.	

Quarterly Statement.

FORM C.

Name and designation of Civil Judge.	Number of decrees and orders passed relating to immoveable property.	Number of Memorandum sentin accordance with Sections 41 and 42, Act XX of 1865, state separately.

NOTE.—This circular is re-printed from our impression of January 1867, as we understand that great difficulty and perplexity are being experienced in the Mofussil, especially in respect to Sections 41, 42, and 43 of the Act.—ED. *R. R.*

ACTS OF THE GOVERNMENT OF MADRAS.

The following Act of the Governor of Fort St. George in Council received the assent of His Excellency the Viceroy and Governor-General on the 8th December 1869, and is hereby promulgated for general information :—

MADRAS ACT No. VIII OF 1869.

An Act to prevent doubts as to the true intent and meaning of certain words used in the Title Deeds of Inams heretofore furnished to Inam-holders by the Inam Commissioner of the Madras Presidency, and to declare the true intent and meaning of Madras Acts IV of 1862 *and IV of* 1866.

Preamble.

Whereas, under the rules sanctioned by the local Government in the year 1859 and published in the *Fort Saint George Gazette* dated the 4th of October 1859, for the adjudication and settlement of Inam lands in the Madras Presidency, the Inam Commissioner of the said Presidency is required to furnish Inam-holders with Title Deeds in respect of their Inams, prepared according to certain forms prescribed by the said Government; and whereas the terms of the Title Deeds so prepared appear in many cases to convey a more extensive right than was intended to be given, or than could be legally given; and whereas it is apprehended that the terms of the Title Deeds may be so construed as to affect the rights and

interests which other persons may have in lands from which the Inams are derived or drawn, in cases where the Inam-holders do not possess the proprietary right in the soil, but only the right of receiving the rent or tax payable to Government in respect of the Inam lands as transferees of the Government, and it is, therefore, expedient to remove all doubts as to the true intent and meaning of the words used in the said Title Deeds; and whereas the words "land" and "lands" are used in Madras Acts IV of 1862 and IV of 1866 in connection with Inams in a sense not applicable to Inams, and it is expedient to explain the true intent and meaning of such words in the said Acts; It is enacted as follows:—

Wording of Inam Title Deeds not to affect holders or occupiers of Inam land; and wording of Madras Acts IV of 1862 and IV of 1866 not to be held to confer on Inam-holder any right which he would not otherwise possess.

I.—Nothing contained in any Title Deed heretofore issued to any Inam-holder shall be deemed to define, limit, infringe, or destroy the rights of any description of holders or occupiers of the lands from which any Inam is derived or drawn, or to affect the interests of any person other than the Inam-holder named in the Title Deed; and nothing contained in Madras Act IV of 1862, or in Madras Act IV of 1866, shall be deemed to confer on any Inam-holder any right to land which he would not otherwise possess.

(By order.)

JOHN D. MAYNE,

Assistant Secretary to Government,

Legislative Department.

BILLS OF THE GOVERNMENT OF MADRAS.

The following Report of the Select Committee on the Bill "to provide for the collection of tolls and license fees on canals and other lines of navigation, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency," together with the Bill, as amended by the Select Committee, is hereby promulgated for general information:—

To

THE HONOURABLE THE COUNCIL OF THE GOVERNOR OF FORT SAINT GEORGE FOR MAKING LAWS AND REGULATIONS.

We have carefully considered the Bill "to provide for the collection of tolls and license fees on canals and other lines of navigation, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency," and now submit our report thereon, with the Bill itself as amended by us.

2. Section 4 has been re-cast, and a proviso has been added, so as to make it clear that the effect of payment of a license fee on any boat should be to exempt it from tolls on any line of navigation governed by the Act while the license was in force.

3. Section 17 of the original Bill has been omitted. It exempted from payment of tolls troops on the march, Military or Government stores, and Military and Police Officers on duty. The ferries, however, will either remain in the hands of Government or be farmed out. If the former course be adopted, Government can, and probably will, direct that no such tolls, shall be exacted. If the latter course, it would also be open to Government to insert a similar provision in the conditions of lease; or it might be found more profitable to Government to pay toll, and to reimburse themselves by exacting a higher rate of rent.

4. Sections 13, 18, 24, 29, and 30 have received verbal corrections, which require no special notice.

MADRAS, 6th January 1870.

R. S. ELLIS.
V. RAMIENGAR.
W. R. ARBUTHNOT.

No. 8 of 1869.

A BILL

To provide for the collection of tolls and license fees on canals and other lines of navigation, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency.

(As amended by the Select Committee.)

Preamble.

Whereas it is expedient to provide for the collection of tolls and license fees on canals, lines of navigation and ferries, and to provide for the management of ferries and the construction and improvement of lines of navigation in the Madras Presidency; It is enacted as follows:—

Interpretation.

1. The following words shall have the several meanings hereby assigned to them, unless where a contrary intention shall appear from the context, that is to say—

"Vessel."

The word "vessel" shall include any ship, barge, boat, raft, timber, bamboos, or floating materials, propelled in any manner.

"Line of navigation."

The words "line of navigation" shall mean any navigable channel subject to the provisions of this Act.

"Channel."

The word "channel" shall include any rive, canal, or waterway, whether natural or artificial.

What navigable channels may be rendered subject to the provisions of this Act.

2. It shall be lawful for the Madras Government, from time to time, by Notification to that effect published in the *Fort Saint George Gazette* and in the Gazette of the district to which the Notification shall apply, to declare that the provisions of this Act shall apply to any navigable channel specified in such Notification; and, from and after such publication, the provisions of this

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Act shall apply to, and be in force as regards, such navigable channel.

By whom navigable channels may be made.

3. It shall be lawful for the Madras Government, from time to time, to authorize any person to make and open any navigable channel, or to clear and deepen any navigable channel, and to stop any water-course, or make any tracking path, or do any other act necessary for the making or improvement of any such channel; and any navigable channel made under this section shall be rendered subject to the provisions of this Act in the manner prescribed in the last preceding section.

Mode of obtaining land for the purpose.

The said Government may take possession, as for a public purpose, of any land that may be necessary for the execution of any of the abovementioned works, under the provisions of Act VI of 1857 *(An Act for the acquistion of land for public purposes)* or of any other Act that may now or hereafter be in force for the taking possession of land for public purposes.

Tolls to be paid on lines of navigation subject to this Act.

4. All vessels entering upon, or passing along any of the lines of navigation subject to the provisions of this Act, shall pay tolls or annual license fees, at such rates as shall be fixed in manner hereinafter mentioned. *Payment of the license fee shall exempt the vessel so licensed from all tolls payable under this Act upon any line of navigation during the period for which such license is in force.*

The Government may fix and alter rates of toll.

5. The Madras Government may fix, and, from time to time, alter, the rates at which such tolls or license fees shall be levied. Provided that no toll or fee shall be levied, and no alteration of any rate of toll or fee shall have effect, until notice shall have been published in the *Fort Saint George Gazette* and the Gazette of the district to which such notice applies, for such period as the said Government may fix, of the intention to levy or alter such toll, or to impose or vary such fee, and of the rate and place at which such toll or fee is to be levied or made payable.

Notification of rate of toll to be exhibited at every Toll-house.

6. Notification of the rates of toll and license fee, and of the places of collection, in English and in the vernacular language of the district, shall be at all times exhibited to public view at every Toll-house where toll is levied under this Act.

Government may appoint persons to collect tolls, and the collection of tolls may be farmed.

7. The Madras Government shall appoint such persons as it may think fit to collect tolls or license fees under this Act, or may lease out the collection of tolls and license fees to any other person. The lessee, or his duly authorized agent, shall be empowered to collect the tolls or fees in the like manner as any person appointed as aforesaid.

Payment of tolls how to be enforced.

8. If any toll or license fee due under the provisions of this Act in respect of any vessel shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such vessel and any furniture thereof, and to detain the same; and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector or Deputy Collector of the district in which the seizure has been made, or other public officer duly authorized by Government in that behalf; and, on receipt of this report, the Collector, Deputy Collector, or other officer as aforesaid shall publish a notice appointing a day for the sale of the said vessel and any furniture thereof. The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale; and, if the toll or fee and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector, Deputy Collector, or other officer as aforesaid, such officer shall sell the vessel and furniture seized, or so much thereof as may be approximately necessary to pay the toll or fee, and also any expenses occasioned by non-payment. So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll or fee and for defraying the expenses occasioned by non-payment, shall be returned to the person in charge of the vessel.

Appointment of Supervisor with power to remove obstructions.

9. It shall be lawful for the Madras Government to appoint any person to be the Supervisor of any line of navigation subject to the provisions of this Act; and such person shall be empowered to cut down and remove any tree which may have fallen, or may be likely to fall, into such line of navigation, and to remove any sunken vessel, and to prevent or remove any other nuisance or obstruction to navigation, of whatever description, whenever he may think it necessary.

Mode of exercising such power.

10. Whenever such Supervisor shall consider that the cutting down and removal of any tree, or the removal of any other obstruction, is necessary, he may, in cases of emergency, at once remove the same, and may for that purpose enter on any private property. In cases not of an emergent nature, he shall serve a notice in writing on the owner or occupier of such private property, or on some adult member or servant of his family, directing him to remove the same within a reasonable time. If the notice cannot be so served, it may be affixed on some conspicuous part of his last known place of abode, or of the nearest village. If the owner or occupier shall not remove the obstruction within the time given in the notice, the Supervisor may proceed to remove it himself, and may for that purpose enter on any private property. Payment of all expenses of such removal may be enforced by the sale of the thing removed in the manner provided for the recovery of tolls in Section 8 of this Act, or, if such sale-proceeds are insufficient, the balance may be recovered in the manner prescrib-

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ed in the case of an arrear of revenue under Madras Act II of 1864.

Supervisor may forbid the construction of fishing contrivances, &c.

11. Whenever, in the opinion of such Supervisor, the construction of any contrivance for fishing or for any other purpose in any line of navigation is likely to cause obstruction to the free and safe transit of such line of navigation, he may, by a notice in writing to be served on the owner or person in charge of such contrivance in the manner prescribed in the previous section, forbid the construction or continuance of such contrivance.

Penalty for causing obstruction to line of navigation.

12. Any person who shall wilfully cause, or shall aid in causing, any obstruction to any line of navigation, or any damage to the banks or works of such line of navigation, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished, on conviction before a Magistrate, with simple imprisonment which may extend to one month, or with fine which may extend to 50 rupees, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction, or in repairing such damage.

Government to establish ferries and license ferry-boats.

13. It shall be lawful for the Madras Government to establish ferries across any *channel* at such points as may be selected, and to maintain or to license boats for the conveyance of passengers, goods, carriages, carts, palanquins, or animals across such ferries, and to forbid, within such limits as may be prescribed, the transport of passengers, goods, carriages, carts, palanquins, or animals across such *channel*, in any boats except such as are maintained or licensed as aforesaid.

Government to fix rates of license fees and tolls.

14. Whenever any such ferry shall have been established, it shall be lawful for the Government, from time to time, to fix and vary the fees payable to Government by the owners of licensed ferry-boats, and also the tolls payable for the conveyance of passengers, goods, carriages, carts, palanquins, or animals across such ferry. A Notification of such tolls shall be at all times exhibited to public view on each side of the ferry in English and in the vernacular language of the district.

Table of tolls.

Management of ferries and collection of license fees and tolls.

15. The Government shall be authorized to appoint all necessary persons to take charge of, and manage, such ferries and ferry-boats, and to collect the license fees and tolls payable at such ferries. It shall also be lawful for the Government to lease out the right of maintaining or licensing such ferry-boats, and levying such tolls; and the lessee, or his duly authorized agent, shall thereupon be empowered to collect and receive such license fees and tolls in the same manner as any person appointed as aforesaid.

Penalty for non-payment of toll.

16. In case of non-payment of toll on demand, the person authorized to collect such toll shall be empowered to seize any goods, carriage, cart, palanquin, or animal chargeable with such toll, and to proceed to sell the same in the manner prescribed by Section 8 of this Act.

Security may be required from lessee of ferries.

17. When any ferry shall have been leased out, it shall be lawful for the Government, from time to time, to require security to be deposited by the lessee for the maintenance of proper boats, servants, and appliances. It shall be lawful for any Revenue Officer *authorized by the Collector in that behalf*, from time to time, to inspect such boats, servants, and appliances, and to satisfy himself as to their fitness or otherwise for the business of the ferry, and to report thereon to the Collector of the district.

Inspection of ferries leased out.

Procedure in case of defective management of ferries leased out.

18. Whenever the Collector shall be satisfied that the boats, servants, or appliances of any ferry which has been leased out are unsafe or insufficient, he shall call upon the lessee to make good the defect within a reasonable time which shall be specified in the notice, and shall inform him that, at the expiration of such time, he will be liable, in the event of non-compliance, to have his lease cancelled, or to have the deficiency complained of made good at his own expense. If the lessee shall not comply with the terms of the notice, the Collector shall be at liberty to make good the deficiency at the expense of the lessee, or, with the sanction of the Board of Revenue, to cancel his lease.

Recovery of expenses incurred on account of defaulting lessee.

19. Where the Collector shall have incurred any expense on behalf of the lessee under the preceding section, it shall be lawful for him either to deduct the same from the security deposited by the lessee, or to recover the amount in the manner provided for in the case of an arrear of land revenue by Madras Act II of 1864.

Power to abolish any existing ferry and to grant compensation in respect thereof.

20. The Madras Government shall be authorized, by notice to be published in the manner directed by Section 5, to declare that any ferry hitherto in use shall no longer exist. But, whenever the Government shall think fit to abolish any ferry in which any person shall have acquired a legal interest, or to establish a new ferry within such a distance of such previous ferry as materially to diminish its income, the owner of such ferry shall be entitled to compensation for the injury done to his vested rights. Such compensation shall be assessed and satisfied, as nearly as possible, by the same procedure as if the ferry were land which had been taken possession of by Government for public

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purposes under Act VI of 1857 *(An Act for the acquisition of land for public purposes,)* or under any other Act that may now or hereafter be in force for the taking possession of land for public purposes. Provided always that any compensation payable under this section shall be satisfied out of the proceeds of the Canal and Ferry Fund hereinafter mentioned.

No action to lie against Government in respect of acts done in pursuance of Section 3 and Section 20.

21. No action or suit shall be brought against the Secretary of State for India in Council or the Government in respect of any injury or damage caused by, or resulting from, any act done under Section 3 or under the last preceding section.

Rules relating to lines of navigation.

22. It shall be lawful for the Madras Government, from time to time, to make rules not repugnant to any law in force, for the management of any line of navigation or ferry subject to this Act, and for regulating the conduct of persons employed for any of the purposes of this Act, and to repeal, alter, and amend the same; and the said Government may affix fines as penalties for the infringement of such rules, not exceeding 50 rupees for any one infringement, or 5 rupees a day for any continuing infringement.

Such rules may contain directions for any of the following amongst other matters :—

For determining the tonnage of vessels and their measurement; for fixing the number and the width of vessels to be allowed to pass into, or out of, or through, any line of navigation at one time or abreast; for determining the length of time during which vessels may remain stationary on any line of navigation, and the amount of demurrage to be paid by vessels remaining stationary beyond such time; for regulating the mode in which, and the places at which, tolls or license fees are to be levied under this Act; for the removal of sunken vessels and obstructions; and for the storing, custody, and disposal of the cargo of vessels, or of any animal or thing seized under this Act.

Publication of such Rules.

23. Rules shall not be passed until the same shall have been published in the *Fort Saint George Gazette and in the Gazette of any district to which they may apply*, for a period of six weeks, and, after that time, the rules shall be published as passed, with such alterations, if any, as to the Madras Government shall seem fit. The rules so published as passed shall not have effect until the expiration of two weeks after such last publication, and all rules so published shall, until the same be repealed or altered, be of like effect as if they were inserted in this Act. Copies of all rules, in English and in the vernacular language of the district, shall be exhibited to public view at every place where toll or license fees are collected.

[illegible] Penalty for evasion of toll, [illegible] right of ferry.

24. Any person who shall refuse to pay, or evade, or attempt to evade, the payment of any toll or license fee due under this Act, or shall infringe any right of ferry, shall be punished, on conviction before a Magistrate, with a fine which may extend to 50 Rupees, or with simple imprisonment, in lieu of fine, which may extend to one month.

Penalty for unauthorized levy of toll, &c.

25. Any person other than the persons authorized under this Act, who shall levy or demand any tolls or license fees, and also every person who shall knowingly demand any higher toll or license fee than this Act permits, or who shall, under colour of this Act, detain, seize, or sell any property or animal, knowing such detention, seizure, or sale to be unlawful, or shall wilfully fail to comply with all the requirements of Section 8, or shall in any manner extort money or any valuable thing from any person under colour of this Act, shall be deemed to have committed the offence of cheating, and shall be liable to such punishment as is provided for that offence by the Indian Penal Code.

Offences against this Act by whom punishable.

26. If any person shall be guilty of an offence against the provisions of this Act on any line of navigation subject to this Act, such offence shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such line of navigation, or adjoining either side of that part of the line of navigation in which such offence shall be committed; and such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent, as if such offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits; and, in case any such Magistrate shall exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

Period of limitation as to actions in respect of proceedings under this Act.

27. All actions against any person for anything done or intended to be done under the provisions of this Act shall be commenced within three months after the act complained of; and notice in writing of the action and of the cause thereof, and of the damages claimed, shall be given to the defendant one month at least before the commencement of such action.

Tender of amends.

If tender of sufficient amends shall have been made before action brought, then the plaintiff shall recover such amount only, and shall pay all the defendant's costs. If a sufficient sum of money shall have been tendered after action brought and before the final hearing, then the plaintiff shall recover such amount and his costs up to the time of tender, and shall pay all costs incurred by the defendant after such tender.

Disposal of fees, tolls, &c., collected under this Act.

28. All rents, license fees, tolls, and fines collected and levied under this Act shall be paid into the public Treasury, and carried to the credit of a fund to be entitled the "Canal and Ferry fund." Such Fund, after payment of all expenses incurred and all claims for com-

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pensation payable under the Act, shall be applied to the *construction*, inprovement, repair, maintenance, and extension of the *channels* and ferries to which the provisions of this Act may be applied. Provided always that the Government shall be under no obligation to expend in any particular District the whole or any part of the surplus fund realized in that District.

Indemnity for certain acts done heretofore in the collection of tolls, &c.

29. All persons employed by the Government of Madras are hereby indemnified for all acts done by them or any of them in the collection heretofore of any tolls on the navigable channels *in the Madras Presidency.*

Short Title.

30. This Act may be cited as "The Canals and Ferry Act, 1870."

(By order.)

JOHN D. MAYNE,

Assistant Secretary to Govt., Legislative Department.

MISCELLANEOUS.

COFFEE ESTATES.

We doubt if the coffee planters of the Madras Presidency are aware of the fact that their attempt to reclaim the waste lands of the country is the only enterprize of the kind in India that is burdened with the payment of a land-tax. The tea planters, neither of Assam nor of the Punjab, pay any land revenue whatever, for, under the rules of 1863 for the sale in fee-simple of the waste lands of Bengal, the North-West Provinces, Oudh, Burmah, the Central Provinces, and the Punjab, the purchase of the land, at whatever price, carries with it an exemption from the land-tax for all time. The rules of the Madras Presidency offer, in all respects, a strange contrast to those of the other Governments of India, and, now that coffee planting has proved so disastrous a speculation, it is time that those rules were revised in a spirit of consideration towards the planter. In every other province of India ten years are allowed for the payment of the purchase-money of the land; in Madras but *three.* The lowest upset price of land in Madras is 2½ rupees per acre, while in the coffee districts it is 5 rupees, and sometimes 10 rupees. In the Bengal Presidency and the North-West Provinces it never exceeds 2½ rupees except in special cases, while in the Central Provinces it is only eight annas. In the Madras Presidency, no grant is allowed to exceed 500 acres, while in the rest of India it may be 3,000, 5,000, and even 10,000 acres. The crowning disadvantage, however, is that a grant of land in the Madras Presidency, let the price be what it may, confers no exemption whatever from the land revenue. Now, if coffee had proved itself the remunerative investment it was supposed to be, and under which belief these Madras rules were framed, there would be nothing to say against them. But now that it is found that the investment is uncertain and dangerous in a very high degree, the Madras Government is bound, we think, to assimilate its terms to those granted to the planters of Assam and Northern India, and so to give relief to the coffee planter.

Men who have lost a fortune in coffee planting in Southern India have no choice but to abandon their estates or continue to pay an assessment of Rupees 2 per acre to the State. A proper representation of the facts of the case ought to secure the remission of this land-tax, at all events for some years to come. The Planters' Club at Ootacamund could hardly do better, we should think, than draw up a memorial to Government upon the subject, representing the disadvantages at which the waste land rules of the Presidency place the coffee planter, and praying for their alteration in conformity with the rules under which the cultivation of tea is being carried on in Bengal and Northern India. The coffee planter is either being treated unjustly, or undue consideration is being shewn to the tea planter.—*Indian Economist, December 10, 1869.*

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THE

MADRAS REVENUE REGISTER.

No. 2.] MADRAS:—TUESDAY, FEBRUARY 15, 1870. [Vol. IV.

"THE COURT FEES' BILL."—II.

Contrary to well-founded anticipations, this master-piece of Financial Legislation still continues in its inchoate condition of a Bill! We were threatened with its binding efficacy on the 1st of January 1870; but we are now told that all its merits and demerits—its excellences and its defects—are not to come into force till the 1st March next. We are tempted by this temporary suspension of legislative childbirth, to pursue our observations on the most modern ideas of judicial taxation in India, as represented in the promised enactment now drawing to the close of its protracted gestation. We have already sufficiently considered how our legislature has been forced to admit, after an unwillingness of more than two years, that Act XXVI of 1867, looked upon with pride as the offspring of consummate wisdom, was not calculated to promote public justice, and, as a consequence, the interests of the common weal. We have considered, too, how the present attempt at amelioration is, on many, if not most, important points of principle and practice virtually nil, and that with a strange mixture of audacity on the one hand and pusillanimity on the other, our senators have ignored the public voice and the dictates of their own conscience—audacity in braving public opinion—pusillanimity as regards the effect of a just moderation on the coffers of the State. At the same time we have not omitted to point out how far, comparatively, the proposed enactment may, in some particulars, be considered to be better than the one which it is intended to supersede, though in all respects inferior to the old law on the subject. Since we wrote our last article, the Bill in question has passed through the hands of the Select Committee to whom it was referred; but, though their report has been published, we have not yet seen it in print. We understand, however, that their recommendations do not materially alter the Bill except in one or two respects, the nature of which we shall notice in the course of our observations.

The general principle of the Bill is reduction, but a reduction that is not carried down low enough to meet the requirements of sound legislation, or the actual need of the community. It is an undoubted advantage, however, to find that it is proposed to adopt a reduction of 25 per cent all round in calculating the value of stamp duty on litigation, and to revert to the former principle of a maximum institution fee. The old law made this maximum 2,000 rupees; the law now to be superseded fixed no limit whatever; the original "Court Fees'" Bill proposed a maximum of 5,000 rupees; but the Select Committee have reduced this

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limit to 3,000 rupees; and we—though not content—must be thankful for all small mercies. It was thought by the honorable member who introduced the Bill that there was nothing inequitable in demanding 5,000 rupees from a suitor merely to give him a title to be recognized as a party privileged to come before a forum, and to consign all his rights to the mercy or whim of the particular judge appointed by the State as the giver of relief for the time being; and that there was nothing inequitable in further demanding another 5,000 rupees from the injured suitor, to have the ignorance and errors of the judge of first instance pointed out, exposed, and remedied in appeal. But when the honorable gentlemen of the Select Committee came to put their heads together to see how far the honorable mover was right, although they perfectly agreed with him—and there can be no mistake or want of unanimity among honorable members in financial operations—they resolved, in deference to the representations made from various quarters, that the maximum fee demandable on litigation should not exceed 3,000 rupees—not on each litigation throughout, but on each litigation in each Court!!! This it would appear is now the final resolve of our legislators; and, as there is no fighting against it, we must grin and bear it with feelings of comparative thankfulness that it is no worse. Another advantage that is worthy of any notice is the reduction to be effected in calculating the value of suits relating to immoveable property. According to the present law the value of immoveable property, for the purposes of judicial taxation, is taken at ten times the annual assessment payable to Government in case of lands permanently settled, and eight times in case of lands temporarily assessed; while for lands which do not come under either head, the value is to be taken at twenty times the annual income derivable from the estate. According to the proposed enactment, the value of land permanently settled stands fast; that of land temporarily assessed is reduced from eight to five times the annual assessment; and, where no revenue is payable to Government, the land is to be valued at fifteen times its annual income instead of twenty times as now. There can be no question that this is an appreciable advantage over the present state of things; but we seriously doubt whether, in the last case at all events, the reduction is by any means such as it ought to be. If by annual income we are to understand the net profits after deducting expenses, such as landlord's share and perquisites, and up-keep, the case would not be quite so bad as we fear; but we apprehend that this annual income is generally taken to mean the gross yield of the land. If this be so, then it is clear that the principle of valuation is grossly inequitable. Even if annual income is to be taken to mean net income after deducting the landlord's share, the rule would still be inequitable as all the remainder is not clear income. Compare this principle with that proposed to be adopted in valuing annuities. Here the valuation of the suit is to be ten times the amount of the annuity; but then the annuity is all clear income; nothing is laid out by the holder of the annuity to realize the profit; whereas in the case of land, the cultivation expenses are heavy, and, with the rent payable to the landlord, must be deducted, before you can ascertain the income actually accruing to the holder of the land. Even in the case of annuities, we have stated our opinion that the valuation to be adopted is too heavy; how much worse must be the condition of landholders in Zemindari tracts, or those holding under middlemen, especially when we bear in mind the vicissitudes of seasons, and the uncertainty of crops.

In our last we ventured to call the atten-

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tion of the legislature to the absence of all provision for the establishment of easements and rights to incorporeal hereditaments, which has frequently led to confusion and mistakes of the most ludicrous character. We are glad to observe that the Select Committee have now provided for this crying want. They have suggested definite provisions for cases where heretofore it was simply impossible to value contested rights; and they have taken the opportunity to provide also for cases, where the relief sought is not of such a description as to make it equitable to take the full value of the subject-matter of litigation, for the purpose of calculating stamps, such as suits for ejectment by landlords against tenants, suits to recover possession in the summary manner prescribed by Section 15 of the Limitation Act, &c. These certainly are decided improvements which we dared scarcely to expect, considering the present state of legislative progress and legislative enlightenment. While on this subject we may remark that, considering even the present state of legislative progress and enlightenment, the legislature might have very appropriately reduced the stamp duty on appeals; for appeals most undoubtedly belong to that class of litigation in which it is unjust and harsh to demand a fee on justice, considering that the object is to remedy the errors of the judge for whose maintenance the suitor has already paid in the institution fee on his original suit. Of course, we except those appeals which are merely litigious, in which, in order to meet the ends of justice, we proposed that the Appellate Court should have the power to fine the vexatious litigant. It is deplorable, indeed, to find that the cupidity of the legislature has obstinately blinded its eyes to this most righteous demand, and that it has closed its ear to all the loud remonstrances addressed to it from the most experienced lawyers and the highest dignitaries on the bench.

It now remains for us to consider what additional burdens are cast on the people by the intended enactment. And on this point, we have nothing to say against the enhancement of fees in cases of letters of administration, certificates to collect the assets of deceased persons, (ordinarily called certificates of heirship,) and such like. We certainly do not quarrel with provisions dealing with contingencies of this nature; on the contrary, we heartily commend the policy of the legislature in introducing taxation where it cannot surely be felt as any burden, for no man will grudge to pay a moderate fee to the State upon any clear gain which the State secures to him. This is only a kind of succession tax, quite distinct from any tax on justice, and is, therefore, a contribution from the subject forming a legitimate source of revenue to the State. Among the burdens cast on suitors by the present legislation, that which we consider to be most open to serious objection, is the abandonment of the principle of refund, except in cases of remand and applications for review. Whenever a suit is compromised or withdrawn at a certain stage, the practice now is to refund the stamp duty paid in the first instance. This practice is hereafter to cease. The argument on which the abandonment of the principle is based is, we think, scarcely worth the paper on which it is written; and it is truly wondrous to note with what perfect unanimity, or without one word of objection, this innovation of a bad type has been allowed to creep in. The reason—yes, actually the reason—of this stroke of policy is to be found in what is stated by the honorable mover of the Bill when he says that the suitor that withdraws gains as much by the withdrawal of the suit, as if it had proceeded to a decision! A more fallacious and really absurd piece of reasoning we cannot con-

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ceive. The causes of withdrawal may be multifarious. It may be that the parties, considering the circumstances of the defendant, elect to enter into an agreement which cannot properly be made a decree of Court; or it may be that any decree of Court is considered likely to be simply ruinous to the defendant without the least possible benefit to the plaintiff. Under any circumstances it is scarcely possible, or probable, that the plaintiff gets every pie that is due to him in all, or even one per cent of, the cases of razinamah or withdrawal. The result, then, is that the plaintiff must lose a good deal of what he has a right to get, or he must prosecute the defendant and take his chance in Court. We cannot describe all the mischievous effects of this part of the legislation under consideration; but they may be easily conceived on the smallest reflection. It is not our object to weary our readers with any further observations on the Bill. We are free to confess that our senators have certainly succeeded, to some extent, in working theoretical principles into a system, however bad and reprehensible those principles be. They have succeeded in creating in every case a preliminary strife between the intending plaintiff and the Government in respect to stamp duty payable to the State, and have armed the judge with powers of final determination, except in cases where the interests of Government would suffer, in which *cases alone* the Appellate Court has the power to revise—that is to say, when the lower Court may have levied too small a fee, the Appellate Court has the power to demand the difference; but where a mistake has been made in the opposite direction, the Appellate Court, in the interests of the State, has no power to refund the excess to the suitor!!! The legislature have thus, in their measure of wisdom, done their duty to the subject and to the State; and nothing remains for us but, oblivious of discontent, to reconcile ourselves to the outpourings of *legislation*, which a learned judge of the present day quaintly remarks is synonymous with *mischief* in this country.

THE JENMEE TENURES OF THE WESTERN COAST.

We are indebted to the *Indian Economist* for an explanation of the peculiar character of the tenure on which land is owned on the Western Coast. Unfortunately, the source to which we point presents us with but part of an able paper on the subject, by that talented indigenous statesman, Sir T. Madava Row, K.C.S.I., the Dewan, or Prime Minister, of the Maharajah of Travancore; and we have, therefore, thought it best to defer extracting the Dewan's memorandum into our columns until we are in a position to present it in its entirety to our readers. Meanwhile, it may be of interest to our readers to know what a *jenmum* and *jenmee* really mean. Any practitioner who has had to deal with appeals from the Western Coast must be familiar with these names and several others; but we dare venture to say that he will own himself to have been often puzzled with the complication of questions connected with holdings, which have passed through a variety of stages from the full proprietorship of a *jenmee* to the precarious tenure of a conditional *kanomdar*. Of course, Sir T. Madava Row confines his attention to the lands comprised within the Travancore Sirkar; but there is no doubt that the state of things which prevails in that territory prevails also in the adjoining lands of British Malabar. Before one involves himself in the mazes of sub-tenancy, it will be advantageous to know what are the elementary principles of land-owning on the Western Coast. The original land-owner is called a *jenmee*, and his estate is called his *jenmum*. As far as we are aware, we have no corresponding land-

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lord and estate in the Madras Presidency, with the exception of Malabar, answering to the description of a jenmee and his jenmum. The nearest approach is a *mirasdar;* but not only does great uncertainty prevail as to the exact title of a mirasdar; but as will appear, he differs in one great essential, which completely takes away from any resemblance to the Malayalum landlord. From what the Travancore Dewan tells us, the *jenmee* is the hereditary proprietor of the soil, paying no tax whatever to the Sovereign. If the mirasdar is what he professes himself to be, he may be the hereditary owner of the soil, but he does not escape the payment of assessment to the State for the land he enjoys. Herein is the distinction. The *jenmee* of the Malayalum country is an absolute freeholder, and possesses entire immunity from all taxation on account of his land. This state of things is attributed to an act of the great warrior Parasu Rama, who, our readers are doubtless aware, was the uncompromising champion of the Brahmins, and is said to have even exterminated the Chatryas (or king's caste) for an insult offered to the superior tribe. The whole of Karela Désum, in which Travancore is included, was conquered, it appears, by Parasu Rama, and by him allotted to a number of Brahmins as absolute owners. We have heard, however, of another tradition which attributes the creation itself of Malabar to the great power of Parasu Rama. This tradition states that the whole of the Western Coast was once submerged, and that Parasu Rama commanded the ocean to retire, and thus reclaimed Malabar towards the end of the Krita yuga; and that it is in commemoration of this mode of acquisition, that the giving of water to drink by the jenmee to his transferee is a necessary symbol of every such transfer. These Brahmin proprietors, who were the recipients of Parasu Rama's munificence, and who are known as Numboories, were not merely feudal lords, but actual territorial lords, each independent of the rest, and each independent as to his possession of the State, therein again differing from mirasdars, who hold in common. The Sirkar itself has no property in the soil, except in those lands or estates which have been acquired in the way of purchase, gift, or escheat; and in this respect, it becomes no more nor less than a *jenmee*, like any other jenmee holding original proprietorship. Thus, a jenmee in Malabar differs altogether from the landlords of the rest of the Madras Presidency, who, whether as Zemindars, Mutahdars, or ryots, hold entirely of the Government. As Sir T. Madava Row puts it, the title of the jenmee is *inherent;* and, as far as his jenmum lands are concerned, he is "a *little territorial sovereign*" by virtue of ownership. In other words, "jenmum lands are precisely what are, in Europe, called allodial properties, as contradistinguished from feudal." We all know what feudal means. Notwithstanding its immediate Teutonic derivation, it evidently comes from the Latin word *fidelitas*, signifying obligation or fealty to a superior. Thus a fief, or feudal tenure, was the right of a tenant to hold lands or hereditaments in trust for his lord, the tenant using and taking the profits of the land hereditarily, and rendering in return certain services to his lord; the property of the soil, however, always remaining in the lord or superior. On the other hand, allodial land was that which was held independently of a lord paramount; an *allodium* being a freehold estate which was the absolute property of the owner, subject to no rent, service, or acknowledgment of a superior. It is said that in England there is no allodial land, all land being held of the Crown, while in America property is mostly allodial; and this would appear to be the case in the Malayalum country from the circumstance of its original partition among, and free bestowal on, the Numboory

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Brahmins by the conqueror Parasu Rama.

This would undoubtedly appear to be the theory of original ownership of the soil on the Western Coast; but we doubt whether practically it exists in the present day within that part of the Malayalum country which has fallen to the British Government. We cannot think that the paw of the lion has not been laid on the Malabar landlords, and that one way or another all land in that province has not been made to contribute its quota to the great Land Revenue of the country. Let us, however, confine ourselves to the Western Coast theory of landed rights, which Sir T. Madava Row assures us is strictly respected in practice within the limits of the Travancore Sirkar; for he distinctly states that there the jenmum lands, "so long as they continue in possession of the jenmee, *are free of all taxation*," and that the exemption continues in full force to the present day. The Sirkar itself is but a jenmee, as respects those lands which it has acquired by escheat, or otherwise; and, as respects other lands belonging to private jenmies, it has no more right over them than one jenmee has over any land which is not his jenmum. The theory, then, in Malabar and the practice in Travancore are, if a man wants land, he must obtain it from, and hold it under, some jenmee. Except in the case of waste lands, we presume that but very little land is now at the disposal of the jenmies, all cultivable land having passed into the hands of the real landlords, while theoretically ownership still continues in the original proprietors. Indeed, the Travancore Dewan tells us that such is the case. He says, "In value and area such lands," *i. e.*, jenmum lands, "are of great importance, and they are held by thousands of individuals. The primary owners of such properties are mostly the Numboory Brahmins; but the lands are actually in possession of others in the character of tenants." Sir T. Madava Row proceeds to tell us that neither the Sirkar nor the private jenmies are able to cultivate their lands themselves; so that, with the exception of the small portions retained under direct management, the great bulk of the lands is necessarily transferred to others who undertake the management of it for the direct profit to be got out of it for themselves; and these again sub-let the lands to under-tenants in different degrees, until the practitioner not versed in the mysteries of West Coast tenant rights is bewildered with the various demises in the shape of kánom, and pátom, and otti, with which he has to contend. We understand that these inferior tenures, although conveying no more than mere temporary possession, are by no means simple in their character, but unite in almost every case the consideration of mortgage and rent; and that this is attributable to the jealousy with which landed interests are regarded in Malabar, the successive stages of transfer being carefully watched, in order that the allodial right, which is the last parted with, may not be endangered; so sacred and inviolate is it considered. The very word *jenm* means life, or generation; and we have read that nothing is considered more disgraceful than to dispose of jenm rights, even after the essential advantages of the estate are gone, and nothing remains but a nominal superiority and a very remote chance of redemption. We do not intend, however, to go beyond our depth, and endeavour to dive into the mysteries of the various kinds of *kanom patoms* and *otti kanoms*, and the numerous formulæ and symbols by which such transfers are attended; but we shall confine our attention to the principal transfers that take place between landlord and tenant, with which alone that portion of the Dewan's paper before us deals. It appears to have been a well-understood principle until very recently that the tenant of a jenmee could not be

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evicted, so long as, we presume, there was no failure on the part of the latter to fulfil his portion of his contract. Contrasting their position in this respect with the ordinary landlords of British India, the Travancore jenmies got up an agitation to secure the right of eviction, and were even favoured by the Courts in consequence of an imperfect appreciation of a well-established and recognized usage. It was to put down this agitation that the Dewan issued a proclamation, and, in view to a final settlement of the vexed question, that he drew up the Memorandum forming the subject of this notice. His paper deals with three classes of individuals—first, the jenmee; secondly, his immediate transferee; and thirdly, the under-tenant. These he symbolizes by the letters A, B, and C. The transfer of land from A (the jenmee) to B (the tenant) is either by a lease, pure and simple; or it is a transfer for a consideration, equal to, or less than, the value of the land. It is the latter description of transfer that is dealt with, known in Malabar language as a *kana-pátom*. The transfer on simple lease presents no difficulty, because the stipulation is that A resumes the land on the termination of the lease. But when A transfers land to B on a kana-pátom, it opens up the question, has A a right to resume on restoring the consideration? As properly pointed out by Sir T. Madava Row, if A transfers to B for a consideration fully equal to the value of the land, and if such transfer partakes of the character of an absolute sale, then certainly A can have no right to resume. But there are transfers which are not of this definite example, and where the consideration is but part of the value of the land; and the question naturally arises why should not the original proprietor be in a position to resume his land, on returning the consideration-money to his tenant? The sound and safe principle upon which the solution of the important question depends is pronounced by the Dewan to be of a two-fold character—first, the *custom* of the country; and secondly, *utility*. How far the element of utility may be appropriately brought to bear on the settlement of such questions we are at a loss to determine; but we entirely agree that the custom of the country is a most important element of consideration in determining a dispute of this kind, though it cannot be the only element necessary for its determination. We are entirely at issue with Sir T. Madava Row, however, as to the power or tribunal that is to determine such questions. He would leave all differences between the classes of tenants represented by B and C to be settled by the ordinary courts of law, but he would reserve every question arising between A and B, the jenmee and his immediate tenant, for the adjudication of the Sirkar. On what principle of government this politician bases this contention we cannot see, especially when he sets out with the fundamental principle that the Sirkar is itself but a jenmee like any other jenmee, and has no power over jenmums that are not its own. Even where lands are held of the State, the State may indeed declare the conditions upon which the grant has been conferred; but it will have no right to adjudicate upon the legal relations that may afterwards grow out of the grant. The right to resume is a legal right, depending entirely upon the nature and construction of the covenant which may have passed between the proprietor and his tenant, and its legal incidents; and it would be an interference with the action of the Courts for the Government to usurp the functions of the Judge and say it is right for the jenmee to resume, or absolutely to surrender his rights to his kanomdar. To say whether a proprietor has parted with all his rights of property, or still retains the power of redeeming his land—to construe a covenant reciting the consideration and stipulating the conditions on which the transfer has been made and is to endure.

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—are the proper duties of a Judge appointed by the State to administer right and justice between its subjects. It may be that the doctrine of jenm right is efféte; that, by efflux of time, a jenmum is but a tradition of the past; and that any recognition of a myth can only be embarrassing to good government; then, if such be the case, score out the fable with the pen of legislation, and consign the romance of original ownership to the depths of that ocean out of which the deified Parasu Rama is said to have conjured it. But so long as the theory of jenmee right exists and is recognized—and that it exists and is scrupulously respected in Travancore at all events we are assured is the case by the Malayalum diplomatist—then let the ordinary tribunals of law exercise their proper functions and determine the legal rights existing between a jenmee and his kanomdar, as each case may present itself for examination and settlement. It is better for the security of the subject that legal rights between parties should be publicly investigated and adjudicated on by an agency, whose proceedings are conducted in public and are open to the public, than that private rights should be disposed of in the bureau of a Prime Minister or a Secretary, whose acts are not known to the outside world, and cannot be conveniently subjected, therefore, to the ordeal of public criticism.

RAISING THE PRICE OF SALT.

Just before going to press, we received a packet of papers kindly placed at our disposal by the Revenue Secretary to Government, on the subject of raising the salt duty of Madras. The papers came too late to hand to enable us to make use of them in this impression; but we hope to give our readers the benefit of the discussion when we next make our appearance.

CORRESPONDENCE.

PRINCIPAL SUDR AMEENS.

To the Editor of the Madras Revenue Register.

Sir,

At page 428 of Sloan's *Judicial and Land Revenue Code* the following passages will be found under Regulation VII of 1827:—

"14.—Principal Sudr Ameens possess the power of suspending Vakeels and Ministerial subordinates, without reference to the Civil and Session Judge, subject, of course, to an appeal to that authority.—C. O. S. U., 9th October 1843, No. 82, F."

"15.—A Principal Sudr Ameen should on no occasion entertain, suspend, or dismiss any Ministerial Officer without the previous sanction of the Zillah Judge.—*Ib.*, 10th December 1846, No. 107, B."

To this latter is appended a long note, a remonstrance, in fact, against "its tendency to deprive a Principal Sudr Ameen of the efficient control of his establishment, while he is liable to be held responsible for the neglect of his subordinates (which was the effect produced in one instance, wherein a blind, imbecile, worn-out, old man was retained in office, notwithstanding a medical certificate recommending him to be superannuated." Mr. Sloan directed attention to this order "in the hope that the inadvertence" of its publication in the shape of a circular in the collection of Orders published in 1856, whereas it comprises the substance of a letter only to two offending Judges who had abused their powers, "may be remedied in any fresh collection which may be published."

In this hope he is doomed to disappointment; for, in the "Rules, Rulings, and Decisions" of the High Court at Madras on matters of practice and procedure, he will find his old friend at page 41 a little toned-down and mellowed by age and silent as to Vakeels. Instead of "Principal Sudr Ameens should on no occasion, &c.," it is "Principal Sudr Ameens are not, &c.," and "without the previous *sanction* of the Zillah Judge" is re-placed by "without previous *intimation* to the Civil Judge." Now, my business with these passages is to point out an anomaly and absurdity which the enforcement of this order might bring about if Vakeels are included. For instance, A, a Judge of a Court of Small Causes, also exercising the powers of a Principal Sudr Ameen, might suspend B, a Vakeel of his Court practising on both its sides, and "intimate" that he had done so to the Civil Judge; or B might appeal. In either case, the Civil Judge, being a wrong-headed nasty sort of fellow, who would not see with A's spectacles, or who as a matter, as he might con-

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ceive, of simple justice to B, could not concur with A, it would come to pass by the reversal of A's order that B, debarred from appearance in the Court of Small Causes on its Summary Side, would be free to strut into A's Court and appear for his clients on the Principal Sudr Ameen's side of it. Because, though the Civil Judge might reverse the order of suspension as against B, a Pleader in the Court of the Principal Sudr Ameen, his disposal of the appeal would in no way affect the right of A to exclude B as a Pleader on the Summary Side of his Court. What is required, in my humble opinion, is that the set of Pleaders in the Principal Sudr Ameens' Courts and Small Cause Courts, where the Judge is also a Principal Sudr Ameen, should be wholly confined to such Courts on both sides, and that there should be no appeal to the Civil Judge in the case of the suspension or dismissal of a Vakeel or Ministerial servant, except, through the Judge, to Government. The practice of confining Pleaders to the Courts of first instance, which would thus be established, would be a great boon to litigants. Hundreds of appeals are made at the instigation of Vakeels, solely practising in the Courts of the Principal Sudr Ameens and the Civil Judges, entirely for the purpose of getting additional fees in the Appellate Court with the full knowledge that their clients' cause is hopeless. If an appeal is unavoidable, as it may be in comparatively few cases, then it will be a gain to the client that it should be in fresh hands. If the Court of first instance be the Civil Court, the Regular Appeal to the High Court necessarily passes into the hands of a Pleader of that Court, and, I believe, with equal advantage to the winning and to the losing side in the protection of its interests. Were Barristers and Pleaders in Madras less exorbitant in their demands than they are at present, the calls for their services from the Appellate Courts in the Mofussil would be much more frequent than hitherto, and cases that have been muddled and mismanaged in the Munsiffs' Courts would have a fairer chance of being equitably as well as more scientifically disposed of by our Civil Judges and Principal Sudr Ameens.

I remain, Sir,
Yours faithfully,
REFORMER.

HIGH COURT—MADRAS.

(Appellate Side.)

SCOTLAND, C. J., AND CARMICHAEL, J.

Melvaram—Mirásvaram—Interest.

In a suit by the Inamdar who was also a mirasdar against a paracudy for recovery of melvaram and mirásvaram due by him—

HELD *that the plaintiff was entitled to interest on the value of melvaram only, and not on the mirásvaram.*

Rulings of the Sudr Court dated 6th February and 22nd August 1832, *and S. A. No.* 663 *of* 1861, *followed.*

S. A. No. 73 *of* 1869.

Nyanasummunda Pandara Sannadi *v.* Ramalingam Pillai.

THE plaintiff sued to recover Rupees 3,000, being the balance of the value of grain due on account of melvaram and mirásvaram since Fusly 1268, including interest by the defendant who holds three valies, &c., of land as paracudy in the village of Thottumaniem, which belongs to the Sattanundasamy Pagoda in Sheally Taluk. The defendants contended that the action relating to the produce of upwards of three years previous to the date of it was not sustainable, being barred by Clause 8, Section 1, Act XIV of 1859, that the claim was excessive, and that no interest was legally due upon the amount of produce. The Principal Sudr Ameen of Tranquebar decreed for plaintiff Rupees 336, the value of grain allowable for three years with interest at 12 per cent. He was of opinion that the suit was one for which interest was payable under Section 2, Act XXVIII of 1855. The defendants appealed, and the Civil Judge confirmed the decree of the Principal Sudr Ameen. The defendants presented a special appeal on five grounds, four of which were on the construction of certain documents filed in the suit. The High Court delivered the following

Judgment:—27th January 1870.

There were five grounds of special appeal; but, reserving consideration of the third, we held the others to be untenable. "The third "ground is, plaintiff is not entitled to interest "as there was no stipulation for the payment "thereof." The question is whether it is a case in which interest was payable by law when Act XXXII of 1839 was passed. Plaintiff, besides being the inamdar of the village, *i. e.*, the assignee of the melvaram, is also the mirasdar. As inamdar plaintiff pays a quit-rent to the Government; his tenure is, therefore, under the rulings of the late Sudr Court marginally noted, one to which the old Recovery Act (Regulation XXVII of 1802) was applicable, and he is, therefore, *qua* inamdar, certainly entitled to interest by the old Regulation, which was in force until repealed by Madras Act VIII of 1865 and consequently at the time this suit was brought. But as a mirasdar has been held in Special Appeal No. 663 of 1861 not to be such a proprietor of land as the old Rent Recovery Act contemplated, it was argued that plaintiff should be allowed interest only on the value of the mel-

6th February and 22nd August 1832.

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varam that has been awarded to him, and not on the mirásvaram decreed to him. For the purposes of the present question we think we must treat these decisions as binding authorities, and, governed by them, we hold that plaintiff is entitled to interest only on the value of the melvaram awarded to him, and we disallow it on the mirásvaram. The decree of the Principal Sudr Ameen must be modified accordingly, and defendant must pay the costs proportionate to the amount decreed to the plaintiff. As it has been found impossible to ascertain the proportionate amounts decreed as melvaram and mirásvaram, we think it may fairly be assumed that half the amount decreed by the lower Courts is melvaram and half mirásvaram, and we shall modify the decree by directing the interest to be reduced from twelve to six per cent. and the costs to be calculated on half the sum decreed in all the Courts.

SCOTLAND, C. J., AND COLLETT, J.

Regulation IV of 1831—*Jurisdiction—Effect of leave by Government to bring a suit—Attachment of a shrotriem by Government—Adverse possession—Limitation.*

Where A sued to recover possession of a moiety of a shrotriem kept under attachment by Government from 1831 *to* 1855, *and then made it over to B, and for the restoration of which A presented petitions to Government without obtaining any redress but by being referred to a civil suit in* 1863—

HELD, *reversing the decision of the Civil Judge, that although the decision of Government in* 1855 *was one of a Court of competent jurisdiction which a Civil Court could not question, the grant of leave to go to law left the matter still open.*

HELD *also that the attachment and possession by Government from* 1831 *was such adverse possession as allowed the running of the Statute, and that the suit was barred.*

R. A. No. 89 *of* 1868.

Lakshmi Ummal and three others *v.* Mungapathy Naick and four others.

THIS was an appeal to the High Court of Madras from the Civil Court of Chingleput in Original Suit No. 10 of 1865. The suit was brought in *formâ pauperis* by two direct descendants of the original grantee for the recovery of half of the shrotriem villages of Madipakum and Kottipakum, granted by Government in lieu of kovil fees, on the abolition of the watching system in 1785.

Srinivassa Charriar for Appellants, and Sunjiva Row for Respondents.

The facts of the case will fully appear from the following

Judgment :—5th January 1870.

The plaintiffs have brought this suit to recover possession of a moiety of two shrotriem villages which were transferred by the Government to the first, third, and fourth defendants in 1855 and have since been in their possession and enjoyment, and the mesne profits thereof from Fusly 1241 to Fusly 1272; and also to establish their claim to a moiety of the mirassi rights in the said villages, and of the income received in respect of such rights during the same period of time. The grounds on which they rest their title are that the villages were granted in 1785 to their grandfather Mungapathy Naick and one Tirumalai Naick in equal portions. That in 1798 Mungapathy admitted his cousin Ramachendra Naick to the management of the villages for the benefit of the family and took an agreement from him to that effect. That Ramachendra, as the managing member of the family, in 1802, obtained a parvana of the moiety of the villages in his name and the registry of the same, and, after the death of Mungapathy, continued to be the sole managing member of the family, and protected the plaintiffs' father and their two uncles, who were minors at the death of Mungapathy. That, on the death of Ramachendra, the plaintiffs' father became the managing member and enjoyed the income from the said villages, and during his enjoyment the Collector, on the application of Ramasawmy, the son of Ramachendra, made an order, dated 30th October 1819, enforcing compliance with the terms of the arrangement entered into in 1798. That, after the death of Ramasawmy and the plaintiffs' father, Papamal, the mother of Ramasawmy, held and enjoyed the moiety of the villages, protecting the plaintiffs, who were minors; and on her death in 1831 the Government attached the villages and held them until 1855, and then, contrary to the terms of the parvana and the Hindu law, restored them to the first, third, and fourth defendants, the daughters and grandson by another daughter of Ramachendra; and that, after repeated complaints by the plaintiffs of the illegality of such restoration, they were on the 11th March 1853 referred by the Government to a civil suit.

The defendants 1 to 4 who alone defended the suit, by their written statement, denied the title of the plaintiffs as alleged, and pleaded the bar of the suit by the Act of limitation, and set forth that Muttu Murti Naick, the father of the said Ramachendra, was the owner of the moiety in question long before, and until, the Government attached the villages in 1831, and after his death it was granted by sannads and a parvana of the Government, dated the 7th July and 30th August 1802, to Ramachendra and his descendants, and the other moiety to Tirumalai Naick. That Ramachendra died in 1819 in the enjoyment of the moiety, and was succeeded by his son Ramasawmy, who obtained the registry of the same in his name, and died issueless and unmarried in 1824. That after the attachment by the Government on the death of Papamal, petitions were presented to the Government stating the claims of the

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daughters of Ramachendra by Papamal, which led to the order of the Government restoring the moiety to the first, third, and fourth defendants, together with the amount of the profits derived therefrom from the date of the attachment.

The recorded issues appear to have raised all the points in dispute between the parties, and the Civil Court deciding thereupon in favour of the plaintiffs' title as alleged, has decreed to them as the lineal male heirs of the original shrotriemdar, Mungapathy, possession of the moiety of the shrotriem right in the villages and payment of Rupees 5,100 on account of the mesne profits from 1855. But, on the issue raising the question of the bar of the suit under the Act of limitation, the Court has found in favour of the defendants with respect to so much of the plaintiffs' claim as relates to a moiety of the mirassi rights of the villages, and the suit so far has been dismissed.

The defendants 1 to 4 have appealed on the grounds substantially that the Act of limitation afforded a complete bar to the suit, and, if not, that the plaintiffs had failed to establish their right as heirs to the half shrotriem right in dispute. As the case does not admit of a decision on the first ground of objection without a full consideration of the evidence relating to the question of title, we will deal with this question first, and the point on which it appears to us to turn is the legal effect of the parvana granted in 1802 and relied upon by both sides. Was it, as the plaintiffs allege, made to Ramachendra as the manager of the family acting temporarily under the kararnamah (Exhibit K) entered into with the plaintiffs' grandfather Mungapathy, or did it vest in him an absolute estate of inheritance in the moiety of the villages as the defendants contend?

The genuineness of the kararnamah (Exhibit K) has not been denied, and we agree with the Civil Judge that this and the documents marked A, C, and F are sufficient to show that prior to 1802 Mungapathy was the recognized shrotriemdar in the enjoyment and management of the moiety of the villages, and that Ramachendra first obtained the position of joint manager under the kararnamah, (Exhibit K). But we do not concur in the opinion of the Civil Judge that the parvana was made in the name of Ramachendra merely because he was temporarily acting as manager under the kararnamah, and that it gave him personally no estate in the moiety of the villages. In terms the parvana is an express hereditary grant of the villages on shrotriem tenure, and it may fairly be inferred from the evidence that it was made to Ramachendra as the then rightful heir. The genealogical tree put in evidence by the plaintiffs shows that Ramachendra was, as the defendants have represented, the eldest son of Muttu Murti, the son of the elder brother of the plaintiffs' great-grandfather. He was, therefore, the lineal heir of the senior branch of the family, and it is a perfectly admissible probability that the proprietary right on the moiety had been vested in Muttu Murti, and that the plaintiffs' grandfather had the enjoyment as manager on behalf of Ramachendra. The succession to the moiety, too, like the succession to the mirassi rights, appears to have been in accordance with the express limitation to Ramachendra contained in the parvana.

We must, therefore, give effect to the parvana and hold that an estate of inheritance in the moiety of the villages was vested in Ramachendra and passed by descent to his son Ramasawmy, and consequently that the next heir of Ramasawmy was entitled to succeed to the moiety on the death of his mother Papamal in 1831, when the villages were attached by the Government.

This conclusion reduces the question of title to the point involved in the fourth issue—whether the plaintiffs were the next heirs of Ramasawmy at the death of Papamal, and in deciding it we must be governed by the general law of succession. We say this because the Civil Judge seems to have rested his judgment in some degree on the existence of a special custom regulating succession in the family, of which there is really no evidence in the record. The genealogical tree put in evidence by the plaintiffs has not been seriously disputed on the part of the defendants, and we see no reason to doubt that it represents correctly the state of the family. The plaintiffs, then, are shown to be the collateral paternal kindred of Ramasawmy in the eighth degree, they and he being great-great-grandsons of their common ancestor Vangalapa Naicker, and the defendants are the sisters and the son of a sister of Ramasawmy. Now, there is no doubt that by the rule of law which governs the order of succession to the heritable property of a deceased person in this part of India, such collateral kindred inherit to the exclusion of sisters and the children of sisters. Consequently, the plaintiffs were at Papamal's death the heirs of Ramasawmy preferably to either of the defendants. But as the case is now presented to us we cannot pronounce them to have been, or to be, his nearest heirs. The genealogical tree shows that Ramasawmy had collateral kindred of two degrees nearer relationship, namely, the two grandsons in the male line and his paternal grand-uncle Bangaru, and all that we find stated about them is the remark "not present" which appears under their names. In the absence of evidence as to their deaths we cannot give a decision on the point of heirship.

But assuming the plaintiffs to be the nearest heirs, it has been contended on behalf of the appellant that the suit is not

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maintainable because the decision of the Government in 1858, under which the estate and the mesne profits were restored to the first, third, and fourth defendants, was a conclusive adjudication against the plaintiffs as to the right to the property under Regulation IV. of 1831, Section 2, Clause 2; but the objection is not, we think, valid. The grant of the villages appears no doubt to be one of those to which the Regulation applies, for it is the case on both sides, and the parvana of 1802 in terms stated that the villages were granted as compensation in lieu of the income enjoyed for services in the discharge of Police duties, when the old system of Police under Poligars and Canulgars was abolished and the income resumed by the Government; and the effect of Clause 2, Section 2, is clearly to vest in the Government the exclusive jurisdiction to decide all claims of right relating to such grants as they thought fit. It is proved, too, by the Proceedings of the Government of the 15th December 1854, and the 16th of April and 24th September 1855, which have been called for by the Court, that the decision of the Government in favour of the appellants was come to with reference to the claim of the plaintiffs, and that an express decision was subsequently given upon such claim declaring that the Government considered it to be inadmissible, and rejecting it.

Had the objection rested here it must have been upheld, but the further fact (evidenced by the Government order of the 11th March 1863, Exhibit G) that the Government granted the plaintiffs permission to sue for the recovery from the defendants of the villages in question, seems to us to have relieved the plaintiffs from the conclusive operation of the adverse decision of the Government. The jurisdiction of the Civil Courts to entertain a suit to enforce a claim within the Regulation is not taken away by Clause 1 of Section 2, but merely made conditional upon an order of the Government referring the claimant to a civil suit for redress, and there is nothing in the second clause to prohibit such a reference after an adverse decision on the claim had been passed by the Government. We think that the effect of the Government order was to do away with the binding force of their decision and empower the Court to determine the question of right raised by the plaintiff, and consequently that the objection is untenable.

It remains to consider whether the suit was barred by the Act of limitation. It was instituted within twelve years from 1855, the year of the restoration of the moiety of the villages by the Government to the defendants, and the point to be considered is whether the clause of action alleged in the plaint is shown to have accrued to the plaintiffs or either of the persons through whom he claims title before 1855. It is clear from the statement in the plaint that at the date of the parvana the death of the plaintiffs' ancestor Mungapathy had taken place and Ramachendra was in sole possession and management of the moiety, and nothing appears in evidence to rebut the presumption that he and his son and widow who succeeded him continued to hold exclusive management in right of the estate granted by the parvana. The plaint loosely alleges that the plaintiffs' father managed and realized the income from the villages after Ramachendra's death, which occurred, as appears from the Government Proceedings, in 1817. But the only evidence relating to the management after that event is that contained in the documents marked B and C referred to in the plaint, and they tend to prove that Ramasawmy as heir continued to hold the possession and management of the estate. Whether he excluded the plaintiffs' father from any share in the benefits of the estate before the date of the order (C) is a point as to which we cannot safely form a conclusion, and sufficient does not appear to show any act subsequently done during the life of either Ramasawmy or Papamal amounting to a recognition of the right of the plaintiffs' father or themselves to share the benefits of the estate.

Thus, while the evidence proves the sole possession and management of the estate by Ramasawmy, it is inconclusive as to such possession and management having been non-adverse and consequently to negative that the cause of action arose in the life-time of the plaintiffs' father, and, if it once arose, the period of limitation continued to run, notwithstanding the plaintiffs may have been minors at the death of their father, and the suit was barrd. But supposing the possession not to have been adverse to the plaintiffs' father, and it had even appeared, as the plaintiffs have alleged, that their father held the management, and that Papamal kept possession for only a short time by fraud while the plaintiffs were minors, and not (as appears from the Government Proceedings she did) from the death of her son in 1823 until her death in 1831, the bar we think is established. The Government Proceedings show that the villages were taken possession of by the Collector in 1835 as having reverted to the Government by right of escheat because of the presumed failure of heirs entitled to succeed, and were thenceforward held as the absolute property of the Government until it was decided in 1855 that they should be restored to the defendants. This possession on the part of the Government cannot be considered otherwise than as adverse to the plaintiffs, and it is not, we think, less available as a bar under Clause 12, Section 1 of the Act of limitation, because the defendants do not derive their right to the estate from the Government. The section expressly prohibits a suit of this nature being maintained unless it is instituted within the period of twelve years from the time the cause of action arose and here the alleged right and wrongful posses-

sion constituting a cause of action for the recovery of the land existed from the time that the Government took possession.

Our decision on the question of the bar of the suit renders it unnecessary to give the plaintiffs an opportunity of supplying the evidence required for the determination of the point of heirship. The result is that the decree of the lower Court must be reversed and the suit dismissed. The costs of the appellants in this Court must be paid by the respondents.

HIGH COURT—CALCUTTA.

MACPHERSON AND JACKSON, E., J. J.

Damanulla Sirkar and others (plaintiffs) *v.* Mamudi Nashio and others (defendants.)*

Act X of 1858, *Sections* 6 *and* 7—*Right of occupancy —Leases for fixed terms.*

There is nothing in the mere fact of a tenant having been in possession for over twelve years under a series of pattas, each for a fixed term, which gives him a right of occupancy.

Mr. *M. L. Sandyal* for appellants.

Baboo *Girish Chandra Ghose* for respondents.

The facts are set out in the judgment.

MACPHERSON, J.—In this case the plaintiffs sue to be restored to possession on the ground that they have a right of occupancy. The case made by the plaint is that one Hanif Mohammed Sirkar had two consecutive leases of the property (at different rents) extending from 1259 to 1271 (1852-53 to 1864-65); that, although the leases were in the name of Hanif, the other plaintiffs were jointly with him interested in them; and that, on the expiry of the last of the two leases in 1271 (1864-65), they held on for some little time longer until Chaitra 1272 (March and April 1866), when they were turned out by the defendants.

The first Court has dismissed the suit, one of the grounds for such dismissal being that, on the face of the plaint, no such title by right of occupancy is shown as would entitle the plaintiffs to a decree.

The decision of the first Court was confirmed by the Judge on appeal; but the Judge does not accurately state, and does not decide this point as to whether the plaintiffs had or had not acquired a right of occupancy as alleged by them. In special appeal it is contended amongst other grounds that the case may be remanded in order that the plaintiffs' title, *i.e.*, their right of occupancy, may be inquired into; and it is urged that, supposing the plaintiffs to have held the land as alleged by them, that is to say, from 1259 to 1271 (1852-53 to 1864-65) under the two consecutive leases, and subsequently to have held over for some months, they have been in actual possession for more than twelve years, and, therefore, they have acquired a right of occupancy. The appellants' pleader relies on the language of Sections 6 and 7 of Act X of 1859 as expressly bearing out his contention.

It appears to me that on the face of the plaint the suit was properly dismissed because there is nothing in the mere fact of a tenant having been in possession for twelve years under a series of pattas, each for a fixed term only, which gives him a right of occupancy under Act X of 1859, especially in a case like the present, where the commencement of the tenancy is so recent, dating (as it does) no further back than 1259.

On behalf of the appellants a case has been referred to—*Haran Chunder Paul* v. *Mookta Soonduree*;* but that case decides nothing more than that the particular putta then before the Court (the terms of which are not given), and the holding under it by the plaintiff in that suit and his father, or both of them, might possibly have created a right of occupancy in the plaintiff (in that suit). So far as that case goes, I perfectly concur in what is laid down there, admitting, as I do, that, if the circumstances now before us were other than those set forth in the plaint, the plaintiff might very possibly have a right of occupancy, although he had held under leases for fixed terms. Another case, *Roy Odyte Narain Singh* v. *Ubhurun Roy*† was referred to for the appellants; but in my opinion it makes more against the appellants than for them, though no doubt there are certain words in the judgment in that case which when read by themselves favour the view taken by the appellants.

On the other hand there are other cases reported: *Sadhoo Jha* v. *Bhupwan Oopodhyia*;‡ *Kebul Muhtoon* v. *Sheikh Sunnoo*;§ and *Puddo Monee Dossia* v. *Jholla Pally*,|| in which it has been expressly held that a ryot who holds for more than twelve years under a potta or pottas granted for a fixed term or fixed terms of years does not acquire a right of occupancy by reason merely of his having held the land under his lease or leases for more than twelve years.

The plaintiffs' title in this case being solely under two leases having fixed terms, and the plaintiffs never having been in possession until they got the first lease in 1259, there is nothing in the plaint which leads to the legal conclusion that they have, or can have, a right of occupancy. On this ground, therefore, I think that the first Court was right in dismissing the plaintiffs' suit; and on that ground I would also dismiss this appeal with costs.

JACKSON, J.—I also think that the appeal should be dismissed on the same ground as that which Mr. Justice Macpherson has just now stated. It is clear to me on the face of the plaint that the plaintiffs have no right of occupancy. They have held the land in dispute apparently for about twelve years under two terminable leases, and they have been dispossessed from the land in the year after those leases expired.

* Special Appeal, No. 2,805, of 1868, from a decree of the Officiating Judge of Dinagepore, dated the 16th June 1869, affirming a decree of the Principal Sudr Ameen of that district, dated the 25th April 1868.

* 10 W. R., 113.
† 4 W. R., Act X, Rul. 1.
‡ 5 W. R., Act X, Rul. 17.
§ 5 W. R., Act X, Rul. 80.
|| 7 W. R., 283.

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I am of opinion that in this case the provisions of Section 7 of Act X of 1859 would apply, and that there was a sufficient express stipulation that the holding of the plaintiffs was to be for a certain fixed term only, and that the defendants had accordingly full right to remove them from that land at the close of that term.

This appeal must be dismissed with costs.—*Bengal Law Reports, Vol. III, Part XIV.*

JACKSON, L. S., AND MARKBY, J. J.

Musst. Umasundari Dasi (objector) *v.* Birbul Mandal and others (plaintiffs) and Ananto Sen and others (defendants.)*

Rent—Tenure—Act VIII of 1865, *Section* 16—*Act X of* 1859, *Section* 77—*Incumbrance.*

In a suit for arrears of rent the defendant set up in defence that the relation of landlord and tenant did not exist, as the tenure of the plaintiff's superior landlord had been sold for arrears of rent, and that under Section 16, *Act VIII of* 1865, *the plaintiff's tenure had lapsed, and that he had paid rent to the purchaser of the rights of the superior landlord. Under Section* 77, *Act X of* 1859, *the purchaser intervened.*

HELD *that the issue to be tried in the case was "the actual and bonâ fide receipt of rent by the intervenor up to the time of the suit."*

The meaning of the words "the receipt and enjoyment of the rent before and up to the time of the commencement of the suit" (Section 77, *Act X of* 1859*) explained.*

HELD *that the sale of a tenure under Section* 16,† *Act VIII of* 1865, *does not* ipso facto *annul all incumbrances, but certain incumbrances are recognized by this section to survive such sale.*

THE plaintiff, who is the holder of a dar-mokurrari of Khyrabad Chiranjora, sued the defendants for arrears of rent for the years 1273 (1866-67) and 1274 (1867-68.)

The defendants denied their liability to pay to the plaintiff the rent of 1274 (1867-68) on the ground that the relationship of landlord and tenant had ceased to exist between them by the sale of the rights of the mokurraridar, the lessor of the plaintiff, in Sraban 1274, and that the rent of this year had been paid to Umasundari Dasi who had purchased the same.

Umasundari intervened, and opposed the plaintiff's claim, on the ground that she had purchased the rights of the mokurraridar at a sale for arrears of rent, and had since been in possession thereof; that under Section 16, Act VIII of 1865, B. C., the tenure of the plaintiff had lapsed; and that, therefore, he had no right to recover the rent of 1274.

The Assistant Collector recorded the following issue, *viz.*, "whether or not the plaintiff's lease was annulled under Section 16, Act VIII of 1859, by the transfer of his lessor's rights," and passed the following judgment thereon, *viz.*, that "the plaintiff was directed to prove that he came within the exception named in the section, or that the lessor had the power to grant under-leases. He has proved neither," and ordered that the case be decreed for the rent of 1273 only, and that the plaintiff bear all costs.

On appeal the Judge held that the question which the lower Court should have determined was, whether the intervenor did actually and in good faith receive and enjoy the rent before and up to the time of the commencement of the suit.

It found the intervenor had adduced no evidence thereof, and accordingly passed a decree in favour of the plaintiff.

The intervenor appealed to the High Court.

Mr. *Money* (Baboo *Ambika Charan Banerjee* with him) for appellant.

Baboo *Upendra Chandra Bose* (Baboo *Khettra Mohan Mookerjee* with him) for respondent.

JACKSON, J.—It appears to me that neither of the two Courts, before whom this case has been tried has given a decision in which we can quite concur. That of the Assistant Collector, who tried the case originally, is manifestly and seriously wrong. The suit was brought by Birbul Maudal, who described himself as a dar-mokurraridar of the Mauza Khyrabad Chiranjora against Ananto Sen and others, who are ryots of that mauza, for some portion of the rent of the year 1273, and the full rent of 1274.

The defendants admitted that rent was due to the plaintiff for the year 1273, but they alleged that they were not liable to pay anything to the plaintiff for the year 1274, because the rights of the superior holder, the mokurraridar, having been sold under Act VIII of 1865, Bengal Council, in execution of a decree against that person, the rights of the plaintiff as dar-mokurraridar had been extinguished by operation of Section 16 of the Act just quoted, and they further allege that they had paid the rents for 1274 to Umasundari Dasi, who accordingly intervened in this suit under Section 77, Act X of 1859, and was made a party. After examining the plaintiff and the agent or goomastah of the intervenor, the Assistant Collector laid down the issue in these words, "the only issue between the intervenor and the "plaintiff is whether the plaintiff's mokurrari was "annulled or not under Section 16, Act VIII "of 1865, B. C. It is for him to show that he is "included in the exception, or that the grantor "of his mokurrari had the power under his title

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* Special Appeal, No. 3,066, of 1868, from a decree of the Judge of Beerbhoom, dated the 8th August 1868, reversing a decree of the Deputy Collector of that district, dated the 16th May 1868.

† *Section* 16, *Act VIII of* 1865.—"The purchaser of an under-tenure sold under this Act shall acquire it free of all incumbrances which may have occurred thereon by any act of any holder of the said under-tenure, his representatives, or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives, or assignees. Provided that nothing herein contained shall be held to entitle the purchaser to eject *khoodkast* ryots or resident and hereditary cultivators nor to cancel *bonâ fide* engagements made with such class of ryots or cultivators aforesaid late incumbent of the under-tenure or his representatives except it be proved, in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor. Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale."

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"to create such an incumbrance:" and the view which the Assistant Collector took of the case is still further shown by a passage in his judgment in which I find these words, "the issue fixed in "the case was whether the plaintiff's lease was "annulled or not under Section 16, Act VIII of "1865, by the transfer of the lessor's rights, and "the plaintiff was directed to prove that he came "within the exception named in the section, or "that the lessor had the power to grant such "leases. He has proved neither." Now, the only evidence adduced by the parties under the issue framed was the allegation of the plaintiff himself, who on solemn affirmation filed his own potta. In this state of things, the Assistant Collector ordered that the case be decreed for 9 rupees, being the rent of 1273, and that the plaintiff was to pay all the costs. Why the plaintiff should have to pay the whole of the costs in these circumstances, does not appear; but that is of minor importance.

This case going before the Zillah Judge on appeal, he observed rightly enough that as between the plaintiff and the intervenor in this case the sole issue which the Assistant Collector had to try was the question of the actual receipt and enjoyment of the rent by such third person and as between these parties the suit ought to have been decided according to the result of that enquiry. The Judge then found that the intervenor had given no proof whatever of such receipt by her. He, therefore, reversed the decision of the Assistant Collector, and went on to give a decree for the plaintiff in full.

The party who we might have expected to come before us in appeal from this judgment is perhaps the defendants, because, while the intervenor at all events had a remedy by civil suit left to establish her right, and moreover alleges that she has already got the rent for 1274, it is rather difficult to see how she is injuriously affected by the decision, whereas the defendants find themselves in the position of persons having to pay over again to the plaintiff the rent which they say they have already paid to the intervenor. But the defendants neither appeared before the Zillah Judge nor before us. We have, therefore, to consider what, in the present state of things, is the order that we ought to make.

Clearly, the decision of the Assistant Collector was wrong, and I am not certain but that, in the default of the defendants to appear either in the lower Appellate Court or in this Court, we might hold that they had been rightly adjudged to pay. But seeing how entirely the case has miscarried in the Court of the Assistant Collector, and how unsatisfactory it would be to allow a final decision upon such imperfect materials to stand, I think it is our duty to remit this case in order to an entirely new trial, the proper issues being fixed between the parties.

I think this is the more necessary, because it seems to me, looking to the facts that have appeared, and to the efforts made by the intervenor to secure a decision in this case, that there is something more than appears upon the record. It would be very lamentable if parties in the position of the plaintiff in this case holding a dar-mokurrari (supposing that to have been granted for good consideration) should altogether lose their rights in consequence of proceedings on the part of the mokurraridar, which have, to say the least, a somewhat suspicious appearance.

I do not think it will be advisable that we should give any express directions whether the new trial should take place in the Court of the Judge or in that of the Assistant Collector; but, in whichever Court it takes place, the issues to be framed will be, in the first instance, between the plaintiff and the intervenor, whether the one or the other has, in the words of Section 77, "been in the actual "receipt and enjoyment of the rent before and up "to the time of the commencement of the suit;" and upon that issue it seems to me that the Court which tries it will have carefully to consider what is the meaning of "the receipt of rent before and "up to the time of the commencement of the "suit." Supposing that a plaintiff sues to recover rent for the year 1274 and commences his suit on the first day of the year 1275, and supposing also that the plaintiff should have been in unquestioned enjoyment of the rent down to the end of 1273, can it be supposed that the legislature intended that by an understanding between the defendant and a third party, by which the defendant should pay his rent to such third party just before the commencement of the suit, such third party should be at liberty to intervene and to be held to prove the previous receipt of rent up to the time of the commencement of the suit so as to put the plaintiff out of Court? It seems to me that, if that were the case, a very wide door for fraud would thereby be opened.

Now, in this case, the facts are very nearly such as I have supposed. The plaintiff had received rent down to the end of 1272, a great part of the rent of 1273; and the defendant did not deny his right to receive the balance of 1273, and the plaintiff accordingly obtained a decree for such balance. Can it be held that, supposing the fact to be proved that a payment shortly before the commencement of the suit, of the very rent in respect of which the suit is brought, to the intervenor, would constitute the previous *bonâ fide* enjoyment which the intervenor is required to prove under Section 77 before the plaintiff's suit can be dismissed? Without wishing to pronounce any final opinion upon the point, I am inclined at present to think it could not.

This, however, is the issue which will have to be tried between the plaintiff and the intervenor. If the intervenor fails to prove his receipt of rent within the true meaning of Section 77, he will be out of Court, and there will remain the issues to be tried between the plaintiff and the defendants, that is, whether the relation of landlord and tenant continues to exist between the plaintiff and the defendant, and whether, if so, the defendant has paid his rent. If he succeeds in these two issues, it is hard to see how the plaintiff is not entitled to a decree.

It is probable that upon these points various questions may arise. The defendant in this case and the intervenor, who manifestly has made common cause with him, claimed the operation of Section 16, Act VIII of 1865, B. C., and it appeared to be assumed on their side that under that section the purchaser not merely acquired the undertenure which he purchased free of all incumbrances, but that he was entitled to consider all such incumbrances as *ipso facto* annulled, to ignore the holders of such under-tenures, and to proceed to recover rent from the ryots as if they had no existence. Now, it is quite clear that Section 16 recognizes the case of certain incumbrances which

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might survive, notwithstanding the sale of the superior tenant's rights. At first sight it does not appear to me how the purchaser can arrogate to himself the right of determining whether the incumbrances in question are of the excepted kind or not, and, if he could not arrogate to himself such a right, it is difficult to see how, when such incumbrances or under-tenures exist, he could in good faith receive and enjoy the rents of the cultivators, setting such incumbrances aside. But these are questions which will have to be considered upon the remand by the Court below. I merely suggest them as amongst the difficulties of the case. I think the case will have to be remanded for a new trial upon the issues which I have stated.

I would only add that Mr. Money, at the outset of his argument, thought that he might insist upon an unconditional reversal of the decision of the Judge who went upon the ground that the intervenor had given no evidence whatever of his allegation, whereas, in fact, there was such evidence. It seems to me that upon that part of the case the Judge was right, because the only thing wearing the semblance of evidence which has been recorded by the Assistant Collector is the examination of the intervenor's agent previous to the framing of the issues, and, even if it be conceded that what that agent said in respect of the payment of rent was matter which, if submitted at the proper time, would have been evidence, I do not think it could be treated as evidence at all, inasmuch as it was merely a statement of the case which the intervenor intended to make, and upon which the issues had to be framed, and not evidence adduced after framing the issues.

Markby, J.—I am of the same opinion.—*Idem.*

Norman and Jackson, E., J. J.

Fakiruddin Mohammed Ahasan (plaintiff) *v.* Mr. C. J. Phillipps (defendant.)*

Stipulation in lease—Collections by sezawal—Continuing liability of tenants.

It was stipulated in defendant's lease that on his failing to pay any instalment of the rent, plaintiff might appoint a sezawal to collect direct from the under-tenants.

Held *that the appointment of such a sezawal did not determine defendant's lease, and that he was still liable for any deficiency in the rent after the sezawal's collections were credited.*

In this case plaintiff sued defendant as izardar under an agreement by which defendant agreed to pay an annual rent of Rupees 1,246 in certain instalments, and in which it was stipulated that, on failure to pay any one of the instalments, plaintiff should appoint a sezawal to collect the rents from ryots, defendant paying the sezawal's salary. In Aswin 1273 (September 1866) plaintiff appointed a sezawal, who collected Rupees 919-5-0. A sum of Rupees 100 was also paid by defendant for that year. This left a balance of Rupees 226-11-0, which amount, *plus* sezawal's wages (Rupees 245), plaintiff sued to realize. Defendant's contention was that, as he had been deprived of possession by the appointment of a sezawal, he was not liable for any deficit in the collections.

The Judge held that the defendant was not liable for any arrears accruing subsequently to Aswin 1273, when the lease was virtually determined by the appointment of a sezawal. It was (he held) for plaintiff to show clearly that the collections made under his orders did not include any on account of prior months. This he had not done; and, crediting the collection to the earlier kists of the year in due order, the Judge found that up to Aswin there had been no deficiency in the rent for which defendant could be held liable. The cases relied on by the Judge were of *Mr. J. Dalrymple* v. *Bhajan Saha** and *Anundmoyi Debya* v. *Khiro-Hdhur oldar.*†

Mr. *R. E. Twidale* for appellant.

Baboo *Iswar Chandra Chuckerbutty* for respondent.

On special appeal the following judgment was delivered by

Norman, J.—The Judge is wrong, and there must be a remand. The case is an exceedingly simple one. The defendant took a lease from the plaintiff from 1270 to 1275 at a rent of Rupees 1,200 a year. There was a provision in the lease that, if the rents were not paid, the plaintiff would be at liberty to appoint a sezawal and make the collection himself, and the defendant was to appoint a person to see that the collections were duly made and the accounts properly kept by the sezawal.

The rents of 1273 not having been paid, the plaintiff appointed a sezawal, and made considerable collections.

The Judge supposes that, by the appointment of a sezawal, the plaintiff evicted the defendant and turned him out of the land demised; consequently he held that the plaintiff could not be made liable for the arrears of rent which accrued subsequently to the appointment of the sezawal in the month of Aswin 1273; and as the collections made by the sezawal exceeded the amount of rent

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* Special Appeal, No. 2,970, of 1868, from a decree of the Judge of Rajshahye, dated the 12th June 1868, modifying a decree of the Deputy Collector of that district, dated the 7th March 1868

* Raikes, Bayley, and Steer, J. J.

Mr. J. Dalrymple (plaintiff) *v.* Bhajan Saha (defendant.)

"In this case the plaintiff sued to recover a balance of rent on the averment that his lessee having defaulted, he appointed a sezawal to collect the rents, and the sum now claimed is the difference between the amount collected by the sezawal and the amount of rent as per the lessee's kabuliat. The Judge has held that, as the sezawal was allowed to keep possession of the tenure for several years until the expiry of the lease, the tenant cannot be held responsible for any deficiency in the collections whilst under the management of the plaintiff's agent, the sezawal. The Judge quotes the precedent of this Court at page 757 of the Decisions for 1857 in support of this view. The special appeal is, that the lease itself specially provided for the managemet of the tenure in the mode adopted by plaintiff on the occurrence of any default on the part of the lessee; that, therefore, the precedent is not in point, and the Judge's decision wrong.

We have referred to the lease which in the usual terms provides for the deputation of a sezawal, 'as allowed by law,' on the occurrence of a balance; and, as the law only contemplates such occupation by the proprietor during the current year, we hold the lease cannot be considered as contemplating more. We reject the appeal with costs."

† 2 W. R., Act X, Rul. 46.

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due up to that date, the Judge was of opinion that there was nothing in respect of which the plaintiff was entitled to a decree in this suit. We think that in this suit, which is a suit for rent under Act X of 1859, the plaintiff is entitled to a decree for arrears of rent, at the rate of Rupees 1,200 per annum, as claimed in his plaint. From the total rents which were originally due must be deducted what the plaintiff has received on account of those rents. In order to see what was the amount realized by him and applicable to the satisfaction of his claim, we must take not the gross rents collected from the ryots by the sezawal, but the net profits, that is to say, the realization less what in this case is called the "wages of the sezawal," or, in other words, the cost of collection. The ultimate balance of the account is the rent due to the plaintiff.

The two cases referred to by the Judge do not show that a lease is avoided by the appointment of a sezawal. In the latter case, which was an Act X suit, the plaintiff sought to make the defendant responsible for fraudulent conduct on the part of the sezawal who had apparently embezzled rents collected by him. In the case in 1862, the plaintiff had kept a sezawal for a length of time, and treated the tenure as having been resumed by him.

In the present case the sezawal was making the collections under the inspection of the defendant himself; and it is clear that, by the original contract, the parties intended to treat the interest of the defendant as continuing, notwithstanding the appointment of the sezawal.

The case is remanded to be re-tried with reference to the above remarks. The appellant will get his costs of this appeal.—*Idem.*

BAYLEY AND HOBHOUSE, J. J.

Gobind Komar Chowdhry (plaintiff) *v.* Hargopal Nag and others (defendants.)*

Admitting plaint—Holiday—Stamp duty—Suit for arrears of rent—Limitation.

The reception of a plaint for arrears of rent by the Collector on Good Friday, although, by the Circular Order of the Board of Revenue such day is an authorized holiday, is not illegal.

There is no illegality in the reception of a plaint engrossed on insufficient stamp paper if the full amount of the stamp duty has been paid at the time.

Suits for arrears of rent are to be instituted within three years from the last day of the Bengal (or other) year in which the arrears claimed shall have become due.

THIS was a suit for arrears of rent for the years 1271, 1272, and 1273, B. S. The plaint was filed on the 29th Chaitra 1274 (10th April 1868), this being a Good Friday.

The defendant set up in his defence the deterioration of parts of his holding. The Assistant Collector decreed the case.

On appeal the Judge held (referring to two cases of the Sudr Dewanny Adawlut, North-Western Provinces, cited in Broughton's Civil Procedure Code, under Section 25, Act VIII of 1859) that a plaint could not be presented on a holiday, and, if presented, it is to be considered as presented on the first day the Court sits after that holiday; consequently, as the first open day was the 2nd of Baisakh 1275 (12th April 1868), the claim for the arrears of 1271, B. S., was barred. He accordingly decreed the appeal, and modified the decree of the lower Court.

The plaintiff appealed to the High Court.

Baboo *Nalit Chandra Sen* for appellant.

Baboo *Anand Chandra Ghosal* for respondent.

The judgment of the Court was delivered by

BAYLEY, J.—I am of opinion that the judgment of the Judge below is incorrect, and must be reversed.

The facts are these: the plaint in this case, together with an amount of money sufficient to cover the proper stamp duty, was presented before, and accepted by, the Assistant Collector, who was the proper authority to try the case in the Revenue Court, on the 29th Chaitra 1274, or 10th April 1868, that being Good Friday. The suit was for arrears of rent for 1271-72-73, B. S.

The points for our consideration are—firstly, whether, when the plaint was filed on the Good Friday, on which day the Revenue Courts are authorized by certain Circular Orders (to be found at page 157 of the Rules of the Board of Revenue edited by Mr. Chapman) to close the Court, the reception of that plaint on that day was or was not illegal so as to bring the plaintiff's case within the law of limitation; secondly, whether the plaint not being duly engrossed on stamp paper, but accompanied with an amount of money sufficient to cover the stamp duty, was properly put in so as to save the plaintiff's suit from the operation of the Statute of Limitation; thirdly, whether the three years within which suits for arrears of rent are to be instituted is to be reckoned from the last day of the Bengal year during which the arrears claimed shall have become due, or the dates of recognized instalments falling due. This last objection refers to the rents of the year 1271 only.

On the first and second points we think that when it is admitted that the plaintiff was in time, if the plaint could be legally received on the 10th of April; and when it is admitted that the Assistant Collector did receive both the plaint and the full proper amount of stamp duty at the same time, and himself certified to that fact, there was nothing illegal in that proceeding, and, therefore, the plaint was filed in time, so as to prevent the law of limitation from barring the suit. There is no law by which the Revenue Courts can specify certain days on which plaints shall not be received. There is only this Circular Order of the Board of Revenue which is not law, and it merely authorizes the Revenue Courts to close the Courts on certain days specified in that order, and on no other. In this view we think that the fact of the Assistant Collector in receiving the plaint and in receiving the amount of stamp fee necessary for the plaint were acts not illegal, or rendering plaintiff's suit liable to be barred by limitation as not filed in time. The third objection taken in appeal, *viz.*, that the time is to be calculated within three years from the date of the instalments paid, is entirely futile, for the law on this point, Section 32, Act X of 1859, is quite clear, and provides that such suits for arrears are to be instituted within three years from

* Special Appeal, No. 3,165, of 1868, from a decree of the Officiating Judge of Mymensing, dated the 7th September 1868, modifying a decree of the Assistant Collector of Jamalpore of that district, dated the 10th June 1868.

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the last day of the Bengal (or other) year in which the arrear claimed shall have become due. In this view we reverse the decision of the lower Appellate Court and affirm that of the first Court with costs in this Court and in the lower Appellate Court.—*Idem.*

JACKSON, E., AND MITTER, J. J.

Harlal Tewari (plaintiff) *v.* the Collector of Bhagulpore and another (defendants.)*

Settlement—Powers of Revenue Boards.

A settlement of a resumed lakhiraj estate being made by the Collector with the plaintiff "subject to the orders of the Board of Revenue," the Board, or the Commissioner acting under rules laid down by them, may cancel the settlement at any time.

Mauza Tursua, a resumed lakhiraj estate, was form 1861 to April 1864 under measurement with a view to settlement. On 1st April 1864 the ex-lakhirajdar put in a petition in regard to the amount of rent to be paid, from which the Collector inferred that he declined settlement; and, no other offers being made, the estate was on 29th June declared khas. On the 26th October the plaintiff in this suit took a twenty-years' lease of the land at a rent of Rupees 371. In the amalnama or possessory order it was stated that this settlement would be subject to the orders of the Board of Revenue, but no such condition appeared in the kabuliat given by plaintiff. On 13th December the ex-lakhirajdar made another offer which the Collector, on the 9th January 1865, declined to accept, as a settlement had been concluded. On the 7th February the lakhirajdar appealed to the Commissioner, who on 13th October wrote to the Board saying that, as more than three months had elapsed between settlement and the lakhirajdar's appeal, he was doubtful of his power to interfere, and, therefore, asked the Board to cancel the settlement with the plaintiff, which the Board did on 19th October 1865. The plaintiff then sued Government and the lakhirajdar for recovery of possession and confirmation of his lease. The first Court held that the words "subject to the orders of the Board" were surplusage, and not intended to have real effect; that settlements under Rupees 500 were by the Board's Rules confirmed by the Collector, subject only to revision by the Commissioner; and that the Commissioner must be held bound to exercise his power within a reasonable time, which might be taken to be three months, the period within which the Collector's proceedings must be reported to him. The first Court gave the plaintiff a decree. The Judge on appeal held that the Board of Revenue could exercise powers of revision at any time in settlement cases. Regulation I of 1829, Section 4, Clause 2, enables the Governor-General in Council to lay down rules for the guidance of the Board. On 27th June 1842 the following rule was laid down: "The Board of Revenue is competent, with or without appeal, to call for, revise, or alter any proceedings of the Commissioner or other subordinate Revenue Authority not made final by law." The Judge held that the Civil Courts could not determine the time within which the powers might be exercised and that they could be exercised at any time. He further held that, although Section 29, Regulation VII of 1822, prescribed three months as the period of appeal from a Collector's order, there was nothing to make that order final and not open to revision after three months. He also overruled a contention that under the Board's Rules it was the Commissioner's business and not the Board's to revise a settlement under Rupees 500. The Board's powers were not limited by such a rule. The Judge on these grounds reversed the decision of the first Court.

Mr. *W. B. Money* and Mr. *J. S. Rochfort* and Baboos *Ashutosh Chatterjee* and *Chandra Madhab Ghose* for appellant.

Baboos *Anukul Chandra Mookerjee, Jagadanand Mookerjee, Purna Chandra Shome,* and *Annadaprasad Banerjee* for respondents.

The following judgment was delivered by

JACKSON, J.—It appears to me that the decision of the lower Appellate Court is correct. The agreements entered into between the Collector and the special appellant were distinctly declared by the Collector at the time and so stated in the agreements to be not final, but subject to the consent of the Board of Revenue. Those agreements were subsequently brought by the Commissioner of the division to the notice of the Board of Revenue. The Commissioner was of opinion that the arrangements proposed by the Collector were not proper arrangements, and the Board of Revenue concurring with the Commissioner refused to sanction the agreements entered into by the Collector, set them aside, and ordered other agreements to be made. It is said that great delay occurred in the action taken by the Commissioner and the Board of Revenue, and it is also said that the Collector, in fact, never intended that the agreements entered into by him should be subject to the consent of the Board of Revenue; that the agreement was drawn out in an old form which had been long abandoned, and in this way alone had the words "subject to the consent of the Board of Revenue" crept into it by accident; that, in fact, the Collector never submitted his proceedings for the sanction of the Board, but that, under the rules promulgated by the Board itself, the Collector had full authority to enter into agreements of this description of his own accord, and without obtaining the sanction of the Board. The lower Appellate Court has rejected all these objections on the ground that the Board of Revenue had full power under the law to interfere in the act of the Collector, and that, no time having been laid down in the law within which it was to exercise those powers, it could interfere at any time.

The agreements in this case referred to the settlement of some lakhiraj land which had been resumed. It had been settled from time to time with different parties, but the settlement had come to an end, and it was necessary to re-settle the land. The ex-lakhirajdar was the person entitled to the settlement.

He put in a petition asking for a settlement at lower rates than had been proposed. The Collector considered that this petition was a refusal to take the settlement at the rates proposed. The Collector accordingly entered into a settlement with the special appellant. The ex-lakhirajdar after some delay brought the matter to the notice of the Commissioner. That officer and the Board of Revenue considered that the ex-lakhirajdar had

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* Special Appeal, No. 2,728, of 1868, from a decree of the Additional Judge of Bhagulpore, dated the 14th July 1868, reversing a decree of the Principal Sudr Ameen of that district, dated the 28th February 1867.

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not refused the settlement, but was entitled to it, and ordered the settlement to be made with him. The special appellant has now brought this suit to recover possession of the resumed estate, alleging that the agreement with him was final, and could not be set aside. As the settlement made with the special appellant was distinctly declared to be subject to the order of the Board of Revenue, and it is not shown or proved in any way that that clause of the agreement crept into the settlement by mistake, we might decide upon that alone that the Board of Revenue had full power to interfere. If the rules of the Board of Revenue are to be looked to, then the Commissioner had full power to interfere, and did interfere in accordance with those rules, though it may be that as there had been some delay before the case was brought to his notice, and as the agreement distinctly referred to the consent of the Board of Revenue, he preferred to obtain the Board's consent before he passed orders in the case. The argument that if the Commissioner did interfere he was bound to interfere within one month, because that is the period laid down for appeals to him, cannot, in my opinion, stand. It may be that appeals must be preferred within one month, but no time is laid down in the rules within which the Commissioner was bound to exercise his power of revision, and it was these powers of revision which he exercised in this case, and not his powers on appeal. Whether, then, the Board of Revenue had power itself to interpose in the settlement or not, it does not seem to be denied that it had authority to make rules under which Settlement Officers were to conduct settlement proceedings; and even under those rules the orders passed by the Commissioner were legal. The Commissioner had authority to set aside the settlement, and did do so. The plaintiff must fail in his suit even upon this ground. It is not necessary under these circumstances to examine the law laid down by the Judge as regards the power of the Board of Revenue to set aside such a settlement as this. We dismiss this appeal with costs.

Mitter, J.—I concur. The plaintiff is bound by the terms of his lease, and under those terms the Board had full power to interfere.—*Idem.*

OFFICIAL PAPERS.

Composition of Assessment on Second Crops.

Proceedings of the Madras Government, Revenue Department, 8th January 1870.

Read the following Proceedings of the Board of Revenue, dated 3rd November 1869, No. 8,154:—

Read the following letter from G. Banbury, Esq., Collector of Trichinopoly, to the Acting Secretary to the Board of Revenue, dated 2nd September 1869, No. 203.

I have the honour to state that some of the ryots have applied to me for the composition of the assessment of the occasional second crop raised on garden lands along the channel banks, and under-tanks and jungle-streams. It was proposed by Mr. Puckle in his final report,* dated the 30th May 1865, on the settlement of this district, that garden lands along the channel banks, if supplied with Government water, should be made to pay for an occasional second crop at the rate of one-half additional to the single crop assessment. This proposal has been approved of by the Board in paragraph 10 of their Proceedings, No. 3,641, dated the 28th May 1866, and by Government in paragraph 6 of their Order, dated the 19th September 1866, No. 2,523, Revenue Department. In the course of the examinations which are now being carried on, the garden lands under tanks and jungle-streams are, with the concurrence of Mr. Puckle, charged at the aforementioned rate for the second crop raised thereon.

2. When Mr. Puckle was with me here just before leaving for England, he strongly advocated that the compounding system should be introduced as regards these garden lands; but there is no actual sanction or authority for this course, although the advantages of the measure tell equally either as regards "garden" or "wet" lands, which latter were compounded for at the settlement.

3. I beg, therefore, to request the sanction of the Board for compounding for the second crop cultivation on the aforementioned garden lands at one-third of the single crop assessment, subject, however, to the Government Order fixing 1 rupee per acre as the minimum additional charge.

In the above letter Mr. Banbury recommends that the owners of garden land who occasionally raise a second crop by irrigation from channels, tanks, and jungle-streams, may be allowed to compound at the rate of one-third the ordinary water-tax, and states that applications to this effect are coming in.

2. These garden lands at present pay half tax when water for a second crop is taken under Orders of Government, dated 19th September 1866, No. 2,523, paragraph 6, approving the views expressed by the Board in paragraph 10 of their Proceedings of the 28th May 1866, No. 3,641.

3. In paragraph 47 of his report, dated 30th May 1865, on which the above Proceedings were based, Mr. Puckle explained that garden lands had not been compounded for as permanent double crop, as that cess had been confined entirely to nunjah in the settlement; but this forms no bar to the introduction of the measure now proposed, and Mr. Banbury states that during a late visit to Trichinopoly Mr. Puckle strongly advocated the measure. All that seems necessary is that notice should be given that no right is established by such composition, and that in times of scarcity the Revenue authorities retain power to prohibit the supply, a remission being given of the compounded rate for each fusly in which such prohibition has been put in force.

4. The Board, therefore, request sanction of Government to the issue of orders in accordance with these views.

Order thereon, 8th January 1870, No. 44.

His Excellency the Governor in Council authorizes the Board to issue the orders proposed in the foregoing Proceedings.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

* Vide paragraphs 47 to 49.

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Cultivation of Yellow Cholum.

Proceedings of the Madras Government, Revenue Department, 15th January 1870.

Read the following Proceedings of the Board of Revenue, dated 7th December 1869, No. 8,983:—

Read the following letter from the Honorary Secretary, Government Farm, to the Acting Secretary to the Board of Revenue, dated Madras, 22nd November 1869, No. 73.

I have the honour to state that on receipt of Government Order, 26th October 1869, No. 2,846, the Superintendent, Government Farm, was instructed to draw up a paper on the cultivation of "Yellow Cholum" which the Farm Committee consider very superior to "Guinea Grass" as a fodder crop.

2. I have now to forward the paper, and the Superintendent begs me to ask the Board to allow it to be printed in pamphlet form, and that he will correct the proofs if sent to him.

3. I should also recommend that a good number of copies, say 300, be printed and freely distributed first to all newspapers and subsequently to applicants, of whom the number will probably be large.

4. The summary might also be translated and published in District Gazettes in both English and the vernaculars of the district.

Enclosure No. 1.

Sorghum Saccaratum (Sorghum vulgare) or Yellow Cholum.

This is a beautiful grass, resembling in appearance Indian Corn. It bears a small yellow seed, which, when crushed, makes a good auxiliary food for cattle or sheep. It grows on all kinds of cultivated soil, but best on those that are *thoroughly* cultivated and well manured. Indeed, few crops will pay better for *high cultivation*. This valuable plant has attracted a great deal of attention during the last few years, and has been highly recommended as a fodder crop. It is best suited for cultivation in countries where the temperature seldom falls below 60 degrees. It will certainly grow in much colder climates, but scarcely pays expenses. A few years ago the cultivation of this crop was attempted in England, and, amongst other places, on the Experimental Farm attached to the Royal Agricultural College: the yield of green food was insignificant, and its further cultivation was not deemed advisable. The experiment was, however, valuable in affording Dr. Voelcker an opportunity of analyzing the crop during different stages of its growth. He found that the half-grown plant contained about two-and-a-half per cent. of flesh-forming matters, and about eleven per cent. of fat as heat-producing matters. As the Turnip is the sheet anchor of the stock-feeder at Home, we place its analysis alongside Dr. Voelcker's analysis of Yellow Cholum. A glance at these analyses will suffice to show the great value of Yellow Cholum fodder as food for Farm Stock:—

	Yellow Cholum. Per cent.	*Turnip.* Per cent.
Water	85·17	90·43
Flesh-forming matters ...	2·55	1·04
Fat or heat-producing matters.	11·14	7·89
Inorganic matters	1·14	·64
	100·00	100·00

Dr. Voelcker found that in the half-grown plant there was little or no sugar; but, when the plant was three quarters grown, there was as much as 5·85 per cent. of sugar in the lower part of the plant. We have no analysis of Indian-grown plants: however, it may safely be inferred that, if such a large amount of sugar was present in plants grown in a climate so ill-suited for the production of sugar as that of England, a very much larger quantity will be found in Indian-grown plants.

2. On the Government Experimental Farm at Madras during the past twelve months this crop has largely been grown, and generally with very satisfactory results. We propose briefly recording some of the facts ascertained and some of the conclusions formed regarding the culture of this crop for fodder. These conclusions are not founded on a single experiment but on a large number, occupying in the aggregate nearly fifty acres of land. The season was certainly very unpropitious for cultivation of any sort, more especially for cultivation conducted on a soil so extremely sandy and porous as that constituting the Government Farm. The following is an average analysis of the soils upon which these crops were grown:—

	Per cent.
Alumina	3·24
Oxide of Iron	1·35
Phosphate of Lime	·12
Carbonate of Lime	·31
Sulphate of Lime	trace
Carbonate of Magnesia...	trace
Chlorides	·90
Water	2·09
Organic matter	2·12
Sand	89·87
	100·00

3. We now proceed to record the results obtained from two or three of our experimental plots.

Experiments.

In December 1868 we sowed a plot containing 2,420 square yards or half an acre of land with Yellow Cholum, and have in the eleven months which have since elapsed obtained five cuttings, yielding in all 10 tons, 5 cwt., 56 lbs., or 23 tons, 3 cwt., 14 lbs. per acre per annum.

Another plot of a similar size was sown in April last, and during the seven months it has been growing has yielded three cuttings, weighing 5 tons, 15 cwt., 20 lbs. At the present time there is probably about one-third of a crop in the field, making a total of 6 tons, 7 cwt., 20 lbs., or a gross produce of 21 tons, 16 cwt., 8 lbs. per acre per annum.

Both of these crops were occasionally watered. The first crop was irrigated weekly during the first three months of the experiment and about twice a month afterwards; the other about twice a week during the first four or five months, and not oftener

than once a month during the remainder of the time. At each time of watering the water was applied at the rate of about 30,000 gallons per acre. Had a sufficient quantity of water been available much better results would have been obtained. During the last few months the ground was frequently in such a dry parched condition—the result of the excessively dry season—that for weeks together the bulk of the crop was scarcely increased. The first plot received no manure except about 4 cwt. of wood-ashes. To the other plot, which had just borne a crop of maize, about 5 tons of farmyard manure was applied.

Another plot of ground—measuring $2\frac{1}{10}$ acres was sown during the last week of June. No water was applied to this crop; it entirely depended on the rains and dews for its supply of moisture. Two cuttings have been obtained, weighing 8 tons and 19 cwt., and there is still about 20 cwt. in the field, making a total return of 9 tons and 19 cwt. during the five months the crop has been growing, or, presuming that the rains and dews will suffice for the wants of the crop for three months longer, an average yearly return of 7 tons and 12 cwt. per acre. Manure was applied to this crop at the rate of 8 tons per acre.

These are not exceptional results: the crops now growing on the farm will probably yield larger returns than any we have recorded.

Soils.

Yellow Cholum can be grown on all kinds of cultivated land provided the soil is in a good condition and is fairly manured and cultivated. If the soil is naturally rich in plant-food, as is made so by artificial means, the larger will be the returns.

Cultivation.

It is advisable to plough the land *well:* the number of times and the depth will depend on its condition, and must be left to the intelligence of the cultivator. Our practice, when the soil contains only a few weeds, is to plough to the depth of five or six inches and cross with a broad-share cultivator at right angles the line of the plough; collect the weeds; broad-cast about 6 or 7 tons of foldyard manure over the surface; plough in the manure, driving the plough across the lines of the first ploughing; harrow the surface to make it level; and then sow the seeds in lines about twenty-six inches apart, finishing the work by passing the chain-harrows over the surface. If intended for irrigation we proceed as follows:—plough five or six inches deep; cross with cultivator to level the furrows; collect weed; drill the soil in ridges about twenty-eight inches wide, either with a single or a double mould-beard plough; spread the manure in the lines between the ridges; split the ridges with the plough, throwing a furrow on the manure on either side the track of the plough forming the open furrow, down which the water passes while the crop is being irrigated. The land is thus left in *ridge and furrow* as is the custom in England, for the cultivation of Turnips or Mangolds. The seed is sown on the top of the ridge over the manure. Whether sown on the level surface or on the ridge, from twenty-six to thirty pounds of seed per acre will suffice. During the growth of the crop the ground between the lines of plants should be kept as free from weeds as possible, either by frequent use of the hand-hoe or bullock-hoe. If the land is tolerably free from weeds, two bullock-hoeings and one hand-hoeing will suffice between each cutting.

Water.

Irrigation produces at least three times the weight of fodder obtained under dry cultivation. In the former case the crop will continue to grow eleven or twelve months and give six or eight cuttings, while in the latter only seven or eight months and yield three or four cuttings. Water should be applied once or twice a week, according to the state of the weather and condition of the soil: if water can be obtained at a reasonable cost, we would apply it twice a week for three weeks after sowing and after cutting, and once a week afterwards. Dressings of from twelve to fifteen thousand gallons per acre will be sufficient for each application. However, as we have already stated, much depends upon the porosity of the soil and the humidity of the atmosphere.

Manure.

There is nothing like a good application of foldyard manure for producing a *good* crop, though, in the absence of this, poudrette, tank-mud, (which has been previously thoroughly exposed to the air), burnt earth, the refuse of brickyards, wood-ashes, leaves of various plants and trees, aquatic weeds (either fresh-water or marine), bazaar refuse, etc., may usefully be applied.

Harvesting, etc.

We would advise that cutting should commence when the plant is about two-thirds grown. We use a small curved knife for the purpose: with it the coolies can easily cut down an acre in a day. The fodder is best used in the green state after dew or any adhering moisture has been removed by exposure for an hour or two in the sun. Horses, cattle, sheep, and pigs eat it readily. It may be cut, dried, and stacked for consumption during hot weather when fodder is scarce. When dried in this manner it is best given to the stock-chaffer.

Cost of Production.

Under dry cultivation the cost per acre is as follows:—

	Rs.	A.	P.
Ploughing	1	0	0
Cultivating	0	6	0
Collecting weeds	0	12	0
Six tons of manure	6	0	0
Spreading manure	0	3	0
Ploughing	0	12	0
Harrowing	0	2	0
Seeds	1	0	0
Sowing	0	12	0
Chain-harrowing	0	2	0
After Cultivation.			
Five hand-hoeings	5	0	0
Eight Bullock-hoeings	5	0	0
Four cuttings	2	0	0
Total...	23	1	0

With a gross yield of 8 tons per acre the cost of the fodder will be Rupees 2, Annas 14, and Pie 1 per ton.

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When irrigated the cost per acre will be as below:—

	Rs.	A.	P.
Ploughing	1	0	0
Cultivating	0	6	0
Collecting weeds	0	12	0
Ridging soil	0	8	0
Six tons of manure	6	0	0
Spreading manure	0	3	0
Splitting ridges	0	8	0
Seed	1	0	0
Sowing	0	9	0
AFTER CULTURE.			
Eight hand-hoeings	8	0	0
Twelve Bullock-hoeings	6	0	0
Six cuttings	3	0	0
Raising 500,000 gallons of water a height of eighteen feet and distributing the water, etc. ...	20	0	0
Total...	47	14	0

With a gross return of 24 tons of fodder the cost per ton will be Rupee 1, Annas 15, and Pies 11.

SUMMARY.

1. Yellow Cholum is suited for cultivation on all cultivated soils and in all climates where the temperature does not often fall below 60 degrees.

2. Weight for weight it contains a larger proportion of nutritious matters than turnips.

3. It is best cut for fodder when two-thirds grown.

4. When irrigated, 24 tons per acre per annum can readily be grown.

5. As a dry crop it will grow for seven or eight months, yielding about four cuttings weighing 8 tons.

6. When cut in the green state it is readily eaten by horses, cattle, sheep, and pigs.

7. Under dry cultivation one ton of the green fodder can be grown for Rupees 2, Annas 14, and Pie 1.

8. When irrigated, one ton for the green fodder can be grown for Rupee 1, Annas 15, and Pies 11.

The Board have perused with much interest the report of the Superintendent, Government Farm, on the cultivation of Yellow Cholum, and resolve to recommend Government to have the paper printed in the form of a pamphlet and circulated for general information.

2. Copies might, as suggested by the Honorary Secretary, be sent to the local papers and kept for sale at the Government Press.

3. The summary should, the Board think, be translated and published in all District Gazettes.

Order thereon, 15th January 1870, No. 95.

Mr. Robertson's report shows by scientific analysis that "Yellow Cholum" possesses high properties as a fodder, and its adaptability for growth in the plains has been thoroughly tested by experiments at the Government Farm. Under ordinary circumstances an acre of irrigated land is calculated to yield in the space of twelve months five cuttings, aggregating a weight of 23 tons, 3 cwt., 14 lbs. Dry land if properly manured is estimated to yield an average yearly return of 7 tons and 12 cwt. per acre. Mr. Robertson considers that "Yellow Cholum" is not dependent on any particular soil provided that the land on which it is grown be well ploughed and sufficiently manured.

2. The Superintendent's report will be printed for circulation. Copies will be forwarded to all Collectors for translation and insertion in the District Gazettes.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

PROFITS DERIVED BY BELLARY HISSA SHROTRIEMDARS FROM JUNGLES, &c., NOT TO BE TAXED.

Proceedings of the Madras Government, Revenue Department, 25th January 1870.

Read the following letter from the Officiating Inam Commissioner, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 1st November 1869, No. 57:—

I have the honour to submit the following question for the consideration and orders of Government.

2. In 1861 the Hissa Shrotriems in the district of Bellary were settled by this department and converted into Kayem Jodi villages under the Order of Government, dated 22nd March 1861, No. 677, and Title-deeds were granted to the Inamdars, confirming the entire villages to them, subject to a fixed quit-rent.

3. The Collector of the district has since raised the question whether, under the settlement made by this department, the Inamdars are entitled to the produce of the jungles, topes, and date trees in their villages, or whether their right is limited to the mere cultivation of the *lands*.

4. This question does not appear to have come under consideration at the time when the villages were settled, and the annual productive value of the trees was not, therefore, taken into account in fixing the quit-rents on the villages.

5. Prior to the settlement of this department no revenue was ever raised by Government, either from the jungles or the date trees. The topes, however, were rented out by Government and the whole of the proceeds credited to Government without any share being allowed to the Inamdars. The average amount of collections made by Government on the topes in the several villages amounts to Rupees 119, as detailed below:—

Names of the Hissa villages.	Amount of rental. Rs.
Ittighi	1
Devasamudram	1
Kakabal	6
Kondinayakanahalli	2
Bannihatti	1
Kudaradevu	2
Rangapuram	2
Harivibasapuram	2
Kambhattrahalli	1
Rachamarri	18
Hosahalli	8
Braminpalli	20
Gangalakunta	5
Rallapalli	1

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Names of the Hissa villages.	Amount of rental. Rs.
Duradakunta	5
Subbaranpeta	1
Challupalli	38
Venkatapuram	1
Roddakampalli	1
Munisamudram	2
Hulikeradevarapalli	1
Total...	119

6. Although no revenue was raised by Government on the date trees, still I should not omit to mention that the Abkarry renter was allowed to have free use of the trees, and that he drew toddy from them without paying anything to the Inamdars. This, however, is not the case in the Kayem Jodi and Sarva Inam villages, in which the trees are under the control of the Inamdars.

7. From the above it is clear that the District authorities considered that in these Hissa villages the Inamdars had only a right to the *lands* of their villages, but not to the trees standing thereon. I have not been able to ascertain why they were considered not to have any right to the trees, while their right to the land on which the trees stand was undoubted. There is nothing to show the state of things in these villages before the Hissa system was introduced; but I imagine that the trees were in the possession of the Inamdars in the same manner as in any other Kayem Jodi villages, and that the present anomalous system of regarding the trees as the exclusive property of Government is only due to some erroneous view taken by the subordinate Revenue authorities of by-gone days. In the district of Salem the Inamdars of similar villages are allowed to share in the revenue raised on the trees as well as in that derived from the land.

8. The area entered in the Title-deeds issued by this department for these villages includes the land covered by the jungles, topes, and date trees, a reasonable quit-rent having been charged thereon, with reference to the prospect of its being brought under cultivation hereafter, and the documents convey no reservation whatever in regard either to the trees or the jungles.

9. The question I have to submit for the consideration and orders of Government is whether, under the above circumstances, the topes and date trees in the villages should be now made over to the Inamdars; and, if so, whether the quit-rents of the villages should be raised on account of the trees on the ground that their value was not included in the assets on which the quit-rent was calculated. As for the jungles I have no doubt that they belong to the Inamdars, and the question regarding them is nearly the same as that disposed of by Government in their Order, dated 17th September 1868, No. 2,403, Revenue Department.

10. Having by the terms of our Title-deeds made the Inamdars absolute owners of the land, it would be anomalous for the Government to assert and maintain a right to, and control over, the trees standing thereon, and I have, therefore, no hesitation in recommending that they should be made over to the Inamdars. My only doubt is whether the quit-rents charged on the villages should be raised on account of these trees which have now to be declared to be the property of the Inamdars, or whether they should be simply so declared free of further charge, since the settlement was made once for all without any reservation of the Government right in these trees.

11. At first I was of opinion that the quit-rents should be revised, as the annual value of the produce of the trees was not included in the assets on which the quit-rent was calculated; but on further consideration I came to the conclusion that the trees should be made over to the Inamdars free of any further charge, because any alterations in the quit-rents once fixed would have the effect of shaking the confidence of the Inamdars in the finality of the settlement made by this department on behalf of Government.

12. I shall now show the sacrifice of quit-rent that will result from making over the trees to the Inamdars free of further charge.

13. The average annual rental of the topes is Rupees 119. This sum *minus* the quit-rent of about Rupees 10 which has been charged on account of the land on which the topes stand must be considered as a loss to the Government. As regards the date trees it is impossible to say whether there would be any real loss, and, if any, what its amount would be. The Government derived no direct revenue whatever from the trees, and there is no reason to suppose that the Abkarry revenue would suffer from making over the trees to the Inamdars. The Collector of the district has at my suggestion excluded the trees from the current Abkarry lease notwithstanding which the Abkarry revenue has risen.

14. Although the date trees in the Hissa villages have been excluded from the current Abkarry lease, still the Abkarry renters appear to continue to use the trees without paying anything to the Inamdars, excepting in one or two villages, and they are, of course, opposed to transferring the trees to the Inamdars. Their objections, however, are not entitled to any consideration since they have no right to the trees under the terms of their contract.

15. Should the Government decide on revising the quit-rents on account of the trees now to be declared the property of the Inamdars, the charge can only be determined, in communication with the Collector, at so much per thousand trees, with reference to the probable future income of the Inamdars. It is extremely difficult, if not impossible, to fix a proper rate of charge. There are no means of ascertaining what would be the future income of the Inamdars from these trees. On the whole, however, I do not think the profit will ever be very large, since the Inamdars cannot dispose of toddy to anybody but to the Abkarry renter, who can thus dictate his own terms. The consumption of sweet toddy must, generally speaking, be too small to affect the interests of the Abkarry renter. I once thought that the difficulty might be met by adding to the quit-rents the full assessment of the land on which trees stand *minus* the sum already charged thereon, and most of the Inamdars agreed to this mode of settlement; but the Government will observe from the accompanying statement that the charge would be very unequal owing to the trees growing densely in some villages and being much scattered in others :—

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Statement showing particulars of the Trees standing on certain of the Hissa Shrotriem Villages in the District of Bellary.

No.	Talook.	Name of the Inam village.		Quit-rent already charged on account of waste land.	Description of the land on which the date trees stand.	Particulars of land occupied by Date trees. Acres.	Assessment.	Deduct quit-rent already charged on the land.	Remainder.	Estimated number of Trees standing on the land. Trees now yielding toddy.	Young trees.	Old and useless trees.	Total number of trees.
1	2	3		4	5	6	7	8	9	10	11	12	13
				RS. A. P.			RS. A. P.	RS. A. P.	RS. A. P.	No.	No	No.	No.
1	Bellary ...	1	Kaligahalli ...	60 0 0	Waste ...	68·00	30 0 0	2 0 0	28 0 0	5,501	1,721	341	7,563
2	Kudlagi ...	1	Yemadapuram ...	6 0 0	Do. ...	16·00	10 0 0	3 0 0	7 0 0	250	....	260	510
		2	Kessanakera ...	30 0 0	Do. ...	43·00	20 0 0	2 0 0	18 0 0	480	....	413	893
3	Harapanahalli...	1	Akkingiri ...	24 0 0	Cultivated ...	4·00	7 0 0	3 0 0	4 0 0	150	525	80	755
					Waste ...	115·00	44 0 0	4 0 0	40 0 0	7,380	7,705	3,265	18,350
						119·00	51 0 0	7 0 0	44 0 0	7,530	8,230	3,345	19,105
		2	Dadapuram ...	....	Waste ...	93·00	12 0 0	7 0 0	5 0 0	2,039	3,819	....	5,858
		3	Josilingapuram ...	12 0 0	Do. ...	60·00	15 0 0	6 0 0	9 0 0	8,150	750	150	9,050
4	Adoni ...	1	Mantriki ...	25 0 0	Cultivated ...	12·00	6 0 0	3 0 0	3 0 0	3,250	3,225	....	6,475
					Waste ...	358·00	112 0 0	11 0 0	101 0 0	45,350	44,350	....	89,700
						370·00	148 0 0	14 0 0	104 0 0	48,600	47,575	....	96,175
		2	Pasalabanda ...	1 0 0	Cultivated ...	7·00	4 0 0	1 0 0	3 0 0	1,160	390	....	1,550
					Waste ...	3·00	2 0 0	0 4 0	1 12 0	900	1,250	....	2,150
						10·00	6 0 0	1 4 0	4 12 0	2,060	1,640	....	3,700
		3	Jalibenchi ...	....	Waste ...	14·00	2 0 0	....	2 0 0	30	30	....	60
		4	Pandanagallu ...	4 0 0	Do. ...	26·00	8 0 0	0 8 0	7 8 0	100	114	....	214
		5	Paramanadoddi ...	3 0 0	Do. ...	26·00	10 0 0	0 8 0	9 8 0	625	375	....	1,000
5	Gutti ...	1	Gundala ...	4 0 0	Do. ...	34·00	7 8 0	0 1 0	7 7 0	3,320	....	....	3,320
6	Anantapuram...	1	Raghavapalli ...	10 0 0	Do. ...	50·00	9 0 0	1 0 0	8 0 0	3,714	3,036	....	6,750
7	Penugonda ...	1	Chellapalli ...	95 0 0	Cultivated ...	40·00	47 0 0	38 0 0	9 0 0	6,855	....	....	6,855
					Waste ...	227·00	77 0 0	10 0 0	67 0 0	20,500	....	....	20,500
						267·00	124 0 0	48 0 0	76 0 0	27,355	....	....	27,355
		2	Venkatapuram ...	9 0 0	Cultivated ...	198·00	40 0 0	22 0 0	18 0 0	1,200	....	....	1,200
					Waste ...	431·00	85 0 0	3 0 0	82 0 0	43,530	....	....	43,530
						629·00	125 0 0	25 0 0	100 0 0	44,730	....	....	44,730

8	Hinduparam ...	1	Maitagolam ...	....	Waste ...	7·00	2 0 0	....	2 0 0	60	365	....	425
		2	Maredupalli ...	5 0 0	Do. ...	35·00	16 0 0	1 0 0	15 0 0	5,683	6,435	200	12,318
9	Madakasira ...	1	Vulikaradenarahalli ...	36 0 0	Do. ...	2,617·00	362 0 0	30 0 0	332 0 0	11,380	11,389	22,745	46,514
		2	Sarjamunapalli ...	7 0 0	Do. ...	2·00	1 1 0	0 1 6	0 15 6	435	18	126	579
			Grand Total ..	331 0 0		4,486·00	928 9 0	148 6 6	780 2 6	1,72,042	85,497	27,580	2,85,119
					Particulars.								
					Cultivated ...	261·00	104 0 0	67 0 0	37 0 0	12,615	4,140	80	16,835
					Waste ...	4,225·00	824 9 0	81 6 6	743 2 6	1,59,427	81,357	27,500	2,68,284

MADRAS,
1st *November* 1869.

(Signed) W. T. BLAIR,
Offg. Inam Commissioner.

Order thereon, 25th January 1870, No. 139.

The Right Honourable the Governor in Council is of opinion that the interests involved are so trifling that it would be decidedly inexpedient to shake the confidence of the Inamdars in the finality of the Inam settlement by re-considering the quit-rents fixed on the Hissa Shrotriems of the Bellary District in view to taking into account the profits to be hereafter derived by the Inamdars from topes, jungles, and date trees.

2. His Lordship in Council is of opinion that the estimate of the assets of the Inams referred to in paragraph 8 of the Acting Inam Commissioner's letter must be taken to have included all profits of every description derivable from waste land, and he accordingly authorizes the Board of Revenue to issue instructions to the Collector in accordance with this view.

3. The present decision is strictly in accordance with the spirit of the order passed regarding the Hissa Shrotriems of the Salem District, which is referred to at the close of paragraph 9 of the Acting Inam Commissioner's letter.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

MACHINE FOR SEPARATING CHINA GRASS FIBRE.

Read the following Proceedings of the Government of India in the Home Department, (Public,) dated Fort William, 11th January 1870, No. 145:—

NOTIFICATION.

The Governor-General in Council is pleased to direct the publication of the following advertisement:—

ADVERTISEMENT.

The Government of India, after communication with various Agricultural and Horticultural Societies in India and with persons interested in the subject, have arrived at the conclusion that the only real obstacle to the development of an extensive trade in the fibre of Rheea or China Grass is the want of suitable machinery for separating the fibre and bark from the stem and the fibre from the bark, the cost of effecting such separation by manual labour being great.

2. The demand for the fibre is now large and no doubt might be extended with reduced prices, and there is a practically unlimited extent of country in India where the plant could be grown.

3. The requirements of the case appear to be some machinery or process capable of producing with the aid of animal, water, or steam power a ton of fibre of a quality which shall average in value not less than £50 per ton in the English market at a total cost, all processes of manufacture and allowance for wear and tear included, of not more than £15 per ton. The said processes are to be understood to include all the operations performed, after the cutting and transport of the plant to the place of manufacture, to the completion of the manufacture of fibre of the quality above described. The machinery must be simple, strong, durable, an[illegible] [illegible]eap, and should be suited for erection at or [illegible] the plantations, as the refuse is very useful as manure for continued cultivation.

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4. To stimulate the invention or adaptation of such machinery or process, the Government of India hereby offer a prize of £5,000 for the machine and process that best fulfils all the requirements named above.

5. Rewards of moderate amount will be given for really meritorious inventions, even though failing to meet entirely all the conditions named.

6. Arrangements will be made by the Government of India for the supply of carefully-dried stems and specimens of fibre separated from the bark but subjected to no other process, to mechanical firms and others desirous of competing, on application to the Secretary to the Government of India in the Home Department,

7. All machinery, etc., must be brought by the competitors at their own charge to a locality which will be notified hereafter, probably in the North-West Provinces or the Punjab, and there worked under the supervision of their own representatives for a sufficient time to enable the judges appointed by Government to determine whether all the conditions named have been complied with. The prize machine is to be transferred if required to Government at five per cent. above cost price, the patent right in any such machine to be also transferred if required to Government on the latter securing to the patentee a royalty of five per cent. on the cost price of all machines manufactured under the patent during its currency.

8. One year from the date of this advertisement will be allowed for the preparation of the machines and their transport to the locality named for the competition, and the trials will then be made and the decision of the judges announced. If no invention of sufficient merit is received in the abovenamed period to obtain the prize offered, the Government will continue to allow machines to be tendered for trial till the end of two years from the same date, after which, or on the award of the prize, the offers herein made will be withdrawn.

(By order of the Governor-General in Council.)

(Signed) E. C. BAYLEY,

Secy. to the Govt. of India.

No. 146.

ORDER.—Ordered that a copy of the above Notification be sent to each of the local Governments and Administrations noted below with a request that full publicity may be given to it:—

Government of Fort Saint George.
Do. of Bombay.
Do. of Bengal
Do. of N. W. Provinces.
Do. of Punjab.
Chief Commissioner of Oudh.
Do. of Central Provinces.
Do. of British Burmah.
Do. of Coorg.
Resident at Hyderabad.

(Signed) J. GEOGHEGAN,

For Secy. to the Govt. of India.

Order thereon, 25th January 1870, No. 134.

Forwarded to the Board of Revenue with the request that they will cause the Notification to be published in the District Gazettes.

2. A copy of the Notification will also be sent to the Superintendent of the Government Press for publication in the *Fort Saint George Gazette.*

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

CAROLINA RICE CULTIVATION.

Read the following despatch from the Right Honourable the Secretary of State for India, (Revenue,) to His Excellency the Right Honourable the Governor in Council, Fort Saint George, dated India Office, London, 14th December 1869, No. 53:—

I have considered in Council the despatch from your Excellency in Council numbered 60 and dated the 11th of October, forwarding, in continuation of Nos. 25 and 45, a further selection of reports on the experimental cultivation of Carolina Rice in your Presidency and Mysore, and informing me that you have sanctioned experiments of cultivation being carried on by the Revenue Officers in five districts* on small farms limited to three acres.

* Kistna.
Cuddapah.
South Arcot.
Madura.
South Canara.

2. I approve these proceedings as likely to yield definite results, by the experience of which the introduction of this valuable cereal may be established in the country.

3. I observe that complaints are made of the last seed having been of an inferior quality; but these statements, as Mr. Robertson, the Superintendent of the Sydapet Farm, remarks in one case, do not seem to be borne out by the results. It should be remembered, too, that in order to preserve the seed in its transit to India a proportion of dried husks or chaff was, as my predecessor informed your Government, packed with the good seed. This should have been explained to the persons to whom the seed was handed over for cultivation, unless it had been previously winnowed.

March 13, No. 14, of 1868.

Order thereon, 25th January 1870, No. 138.

Communicated to the Board of Revenue with reference to the Proceedings of Government noted in the margin.

4th June	1869,	No.	1,583.
22nd July	„	„	2,139.
17th Aug.	„	„	2,351.
25th „	„	„	2,413.
25th „	„	„	2,416.
16th Sept.	„	„	2,585.
22nd „	„	„	2,626.

2. Communicated also to the Government Farm Committee.

3. The despatch from the Home Government of March 13th, No. 14, of 1868, quoted in the margin of paragraph 3 of the foregoing despatch, was communicated to the Board of Revenue with G. O., 20th April 1868, No. 1,038.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

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CAROLINA RICE CULTIVATION.

Proceedings of the Madras Government, Revenue Department, 26th January 1870.

Read the following Proceedings of the Board of Revenue, dated 18th December 1869, No. 9,286:—

Read the following letter from C. W. READE, Esq., Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated Cuddalore, 20th October 1869, No. 237.

I submit to the Board copy of a report* received from the Deputy Collector in charge of a division of this district on the subject of the experimental planting of Carolina Paddy seed.

* Dated 8th July 1869, No. 206.

2. The information disclosed in this letter illustrates the peculiar genius of the native ryot, and shows how strange are still the idiosyncracies of the cultivating classes generally in regard to their position with, and treatment by, the Government; and it seems almost incredible that in the present day and with all the means of intercourse with European and educated Native officials enjoyed by the people, any but the most boorish and uncivilized should be found to express the sentiments entertained by the ryot Kistniah, who, to avoid being overreached, as he thought, by the officers of Government, has attempted to deceive by rendering a false account of the results of his experiment with the Carolina Paddy seed given to him freely for testing its comparative value with the common paddy of the country.

3. I must refer the Board to the letter of the Deputy Collector reporting on the experiment by this very man and by others, and which will be found recorded in Board's Proceedings of 25th June last. The ryot Kistniah stands No. 4 in the marginal list appended to paragraph 2 of the Deputy Collector's letter, and the Board will observe that he gave a more detailed history of the system he had pursued than any other of those who experimented. The falsity of his first statement having now been admitted by himself, it becomes requisite to test the truth of the account he has since given of the results of his cultivation of the Carolina Paddy seed. As far as this may be applied by the results obtained elsewhere in this district where experiments have been carefully conducted, there would seem as little reason to believe the one statement as the other. But the Deputy Collector in paragraph 3 mentions that the yield was two hundred and fifty-fold, and further that, although a portion of the grain harvested had been expended at the time when what remained with the ryots was measured, there were 46 marcals or 138 measures which Kistniah had intended for planting in five cawnies or seven acres of his land in the current year. It is also stated by the ryot that there were 300 grains in a single ear of the Carolina Paddy against 250, the largest known yield from the country paddy.

4. Consequent on these disclosures it is necessary to revert to the various experiments made with the Carolina Paddy seed from its first introduction, and to compare the results arrived at by other experiments with those now adduced, when the difference will be found very striking.

5. I beg to draw attention to the Proceedings of Government of the 21st June 1865, No. 429, with orders thereon of the same date, No. 1,379. The experimenter in the case reported on by me was Mr. Keess, a man of considerable enterprize and Indian agricultural knowledge. Mr. Keess experimented with three sorts of paddy, or, as he mentions, with two, since the seeds labelled "North Carolina," "Kandanghani," and "Indromayoe" were found by him to be identically the same, though it is observed that the yield varied greatly. The following table gives the quantity of seed sown, date of sowing, and date of harvesting and the yield:—

Seed.	Quantity sown.	Date of sowing.	Date of reaping.	Yield.
North Carolina Paddy.	2⅛ measures...	16th December.	20th April ...	38 measures.
	1¼ do.	Do. ...	8th May ...	56½ do.
	1½ do.	Do. ...	Do.	34 do.

I will not here enter on other particulars of this experiment as they do not bear on the immediate object of my letter, though it will be seen from paragraph 18 of Mr. Keess' letter how highly thought of by the natives was this paddy and how eager all were to obtain seed, while Mr. Keess himself expressed the belief that it would prove very remunerative.

6. The next experiment reported on by me will be found recorded in the Proceedings of Government under date 8th January 1866, No. 112, with orders of same date, No. 58, and communicated to me through the Board of Revenue on the 23rd idem, No. 531. The experiment on this occasion was made by my former Sub-Collector, Mr. Whiteside, and all particulars connected with it are given in his letter to my address, recorded in the Proceedings as above under date 4th December 1865. I extract below the same items of information as given in regard to results of the

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experiment by Mr. Keess, premising that the seed experimented with was only designated Carolina Paddy :—

Seed.	Quantity sown.	Date of sowing.	Date of reaping.	Yield.
Carolina Paddy.	¼ measure.	31st May.	10th October.	80 Madras measures or 320 seers.

7. I refrain here from discussing the *modus operandi* or any other particulars connected with this experiment, but will go on to the third experiment reported on by me, and which will be found recorded in Government Proceedings of 17th May 1866, No. 309, with Order of the same date, No. 1,175. The results in tabular form similar to the foregoing are as follow :—

Seed.	Quantity.	Date of sowing.	Date of reaping.	Yield.
Carolina Paddy.	20 measures.	14th September.	25th February.	150 measures of bearded paddy.

As regards this experiment it is to be remembered that it was with acclimatized seed of the previous year's growth, and Mr. Keess stated that three-fourths of the plants had been destroyed by a storm and the influx of salt water, but that the system of culture pursued was as before, and, in all respects, the same as that followed in the rearing of indigenous paddy. Mr Keess accompanied his report with thirty measures of the produce for distribution elsewhere.

8. The fourth and last experiment reported on by me was that of the son of the Shrotriemdar of Veerapermalnellur, and will be found recorded in Government Proceedings under date the 9th July 1867, No. 1,526, communicated to me by the Board under date the 13th idem. Similar particulars as given in the preceding cases are subjoined :—

Seed.	Quantity sown.	Date of sowing.	Date of reaping.	Yield.
Carolina Paddy.	¼ cawnie.	September 1866.	February 1867.	12 cullums & 1½ marcals on quarter cawnie of land

9. The months of sowing and reaping in this instance were precisely the same as in the last experiment by Mr. Keess noticed in the preceding paragraph, but the actual quantity of seed sown is not given, and, as with Mr. Keess' experiment, so in this by the Shrotriemdar, difficulties and obstacles occurred to the proper maturing of the crop, but for which the outturn would doubtless have been very different, so that the results in these two last instances hardly afford data on which to base any certain calculations, though they afford sufficient to pronounce most favourably in support of the general introduction of the Carolina Paddy.

10. It will thus be seen how far in favourable success over every other experiment recorded has been the result now reported in the case of this ryot "Kistniah," and it is probable that the results of like experiments in other parts of the country may be open to the same objection or suspicion of unfair play to which the experiment under notice has apparently been exposed; and the facts now brought to light are at all events suggestive of the necessity there is for extreme caution and watchfulness in testing the results of any future experiments reported on by native agriculturists, and how little otherwise such results are to be relied upon owing to the influences and super-

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tious ideas declared by the Deputy Collector to be so common amongst the ryots of the country. Hereafter every precaution will be taken in this district, and the instructions of Government, recorded in the Revenue Department, dated 25th August, No. 2,413, will be strictly adhered to in all future experiments.

11. I have written to the Deputy Collector, who will carefully watch the progress of the cultivation and growth of the indigenous Carolina seed recently sown by the ryot Kistniah, and the result with all the required particulars will in due course be reported.

ENCLOSURE No. 1.

From C. SREEBALIAH, Deputy Collector, General Duties, to the Collector of South Arcot, dated Trikalore, 8th July 1869, No. 206.

I have the honour to report that the results of the experimental cultivation of Carolina Paddy in this division have been as now discovered far more successful than as reported in my letter, No. 170, dated 24th April 1869, recorded in Board's Proceedings, No. 4,577, dated 25th June 1869.

2. The facts are these—

As already submitted seeds were distributed by Sooriamoorty Pillay, and when I joined the division I had to report the results. I was not present when the harvest was gathered. I had, therefore, to depend on what the experimenters told me. Kistniah (Experimenter No. 4) gave me a statement that he had realized 22 measures from the five measures of seed given him, and, as there was no reason to distrust the truth of what he said, I communicated the results in the letter above quoted.

3. This statement has now been discovered to be untrue.

It appears as now admitted by Kistniah that the outturn was seven kalams, *i. e.*, 84 marcals, and, at three Madras measures a marcal, the quantity realized was 252 measures. The seed distributed was doubtless inferior in kind, and a large portion of it was without the husk on. Kistniah estimates the germinable seeds at one measure, and, if that is correct, the yield was two hundred and fifty times. He spent a portion of the paddy harvested, and what he has now with him, and which I have this day seen measured in my presence and with his permission, is 46 marcals or 138 measures. He intends sowing this seed in five cawnies of land (nearly seven acres) as he is satisfied that this is more remunerative than the cultivation of the indigenous paddy. He also tells me that there were 301 grains in the ears of a single plant against 250 in the best plant of country paddy, and that, as the Carolina Paddy is of a larger size, he expects in the next experiment 100 kalams of produce per cawnie against 40 only of the indigenous paddy.

4. These facts came to light in the manner following:—

A few days ago I sent for the man and requested him to inform me when he prepares the land for the next experiment, and in the course of the conversation it was settled that a cawnie of land could alone be cultivated with the seed (22 measures) in hand; but it would appear he had never expected that his further cultivation would be watched or observed, and was, therefore, I believe, anxious that I should be informed of the truth, as otherwise I would clearly see on a future day that he had not given out the actual results.

He went to one of my subordinates and told him all that had passed, and the truth was thus brought to my notice.

Kistniah was afraid lest, as he seems to have thought, a moiety of the outturn should be taken from him.

5. My object in submitting these particulars is not only to have the errors in my former report corrected but also to enable the Government to see whether, from what has now come to light in this instance, it is not necessary to desire the local officers to use more circumspection, and to institute more searching inquiries in ascertaining the results of the future experiments; for, as I am informed, the reluctance to speak the truth in a matter of the kind is general among the cultivating ryots, and the reason assigned is that the results if reported as they are might lead to increase of taxation, and it is also the common belief that lands become less fertile if their produce is correctly known to the officers of Government or seen by their "evil eyes."

This report will be submitted to Government with reference to Board's Proceedings, dated 25th June 1869, No. 4,577.

2. It appears that the ryot to whom some Carolina Paddy was given for experiment at first reported an outturn of 22 measures from the five measures sown, but now admits that the outturn was 250 measures.

3. He had it seems concealed the facts fearing that half the produce would be taken from him and anxious to retain the entire amount of seed for cultivation on a large scale of such a productive crop.

4. On learning, however, that the present Deputy Collector intended to see with his own eyes the further progress of the experiment, he foresaw the impossibility of successful deception and made a clean breast of it. The figures now given by the ryot cannot be implicitly adopted, but it may be fairly inferred that instead of a failure the experiment was highly successful.

5. The case shows how essential is careful personal supervision by trustworthy officers to the preparation of statistics of any value regarding the success or failure of agricultural experiments, and the Board resolve to impress on Collectors the extreme disadvantage attaching to the inclusion in their reports of any but the most reliable results of such trials.

Order thereon, 26th January 1870, No. 140.

Mr. Reade's letter tends to show the fallacy of attempting to base an estimate of agricultural products on the unsifted statements of the ordinary class of ryots and the consequent necessity of attending in all cases of experiment to the instructions conveyed in the concluding sentence of G. O., dated 25th August 1869, No. ,2413. The Government observe that the Board have wisely forwarded copies of their Proceedings to all Collectors.

2. Deputy Collector C. Sreebaliah deserves credit for the useful information which he has furnished.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

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SEASON REPORT.

REMARKS ON THE SEASON.

NORTHERN SECTION.—During the month copious rains fell only in parts of the Nellore District. In all the other districts the fall was slight and scanty.

GANJAM.—In Ganjam, *Rape, Coriandar, Niger, Green Gram*, and *Brown Cotton* were sown, and the standing crops, consisting of *Sugarcane, Red Gram, Tobacco, Jonnalu, &c.*, were in good condition. Early *Paddy* and *Black Gram* had been cut; the great *Paddy* crop of the district was ready for the sickle.

VIZAGAPATAM.—In parts of the Vizagapatam District *Paddy* was cut. Tanks, channels, and rivers held tolerably good supplies of water.

GODAVERY.—In the Godavery District anicut channels were full. The transplanted *Paddy* crop was cut, and yielded an excellent outturn. The later dry crops, as also *Sugarcane* and other garden products, were thriving.

KISTNA.—*Paddy* crops and the *Pyra* or later dry crops, which latter had been largely cultivated in parts of the district, were in good condition. *Black Paddy* and *Sujja, Corra, Mokka Jonna*, and other early dry crops were harvested, and yielded a good outturn. The *Pedda Jonna* and *Gidda Jonna* crops in a few taluqs of the district sustained serious damage from the attacks of insects and the heavy rains of the previous month.

NELLORE.—The river Pennair in Nellore was in fresh four times during the month, and all tanks dependent on it received good supplies. Cultivation was in progress, and the standing wet and dry crops were thriving. *Indigo, Corra*, and *Raggy* were cut, and the experimental cultivation of Hingunghaut *Cotton* was favourably reported upon.

Prices fell in Ganjam and Godavery, and fluctuated in Vizagapatam and Kistna. In Nellore they were almost stationary.

Public health was good in Ganjam. In all the other districts fever was rife. Small-pox, ague, and dysentery also were here and there prevalent, though not to any considerable extent.

Cattle suffered from disease in parts of Vizagapatam, Godavery, Kistna, and Nellore.

CEDED DISTRICTS.—The rainfall was deficient in these districts, which occasioned some anxiety in parts of the Bellary District.

CUDDAPAH.—The standing crops in Cuddapah were in good condition. Cultivation was progressing, and *Paddy* and a few of the dry crops were being harvested. The outturn was estimated to be above the average.

BELLARY.—Some progress was made in agricultural operations, and few of the early crops were harvested.

KURNOOL.—*Korra* and *Arika* were cut all over the Kurnool District, and *Paddy* in Ramalkotta and Koilcuntla Taluqs. *Bengal Gram* and *Wheat* were largely cultivated, but *Jonna* in Nundial Taluq suffered seriously from heavy rains.

Prices fell slightly in Cuddapah. In the other districts they were almost stationary.

Fever was prevalent all over the section, and small-pox, dysentery, and ague in parts of Cuddapah and Kurnool.

Cattle were generally healthy except in Kurnool, where they suffered from Murrain.

EAST CENTRE.—Heavy rains fell in South Arcot. In the other districts also there was rain, which though not heavy was pretty general.

MADRAS.—Tanks in the Madras District received indifferent supplies, but the standing crops were in good condition except in the Trivellore Taluq, where some distress from drought was reported.

NORTH ARCOT.—In North Arcot cultivation was in active progress, and the standing crops looked as healthy as could be desired. A few of the wet and dry grains were harvested, and yielded an outturn pronounced to be fair.

SOUTH ARCOT.—Heavy freshes passed down all the rivers in South Arcot, and tanks dependent on them received fullsupplies. A few tanks in parts of the district breached in consequence of the heavy rains. Dry and wet grains were extensively cultivated, and the standing crops were thriving. *Varagoo, Raggy, Cholum, Indigo*, and *Car Paddy* were being harvested.

Prices were almost stationary in Madras and North Arcot. They fell in South Arcot.

Public health was, on the whole, good in Madras and South Arcot. In North Arcot fever was widely prevalent, and was attended with some loss of life.

Cattle suffered from disease in parts of the section.

CAUVERY.—There was an abundant fall of rain in these districts.

TANJORE.—All the rivers in Tanjore were in fresh, and tanks received considerable supplies. The second-crop *Sambah* and a few of the dry grains were still being put down, and the standing crops were flourishing. *Kadupukar* was harvested in parts of the district and yielded well.

TRICHINOPOLY.—The unusually heavy rains in Trichinopoly largely increased the store of water in tanks and channels, and brought down abundant freshes in the Cauvery. The standing crops everywhere looked healthy, and the harvesting of *Kar, Cholum*, and *Raggy* was nearly over.

Prices fell in Trichinopoly, but were stationary in Tanjore.

Cholera existed in parts of both the districts of this section, but was particularly severe in Tanjore, where small-pox and fever also contributed in some measure to the ill-health of the district.

Cattle were healthy.

SOUTHERN SECTION.—Heavy rains fell in this section, and were accompanied by a severe gale in Tinnevelly.

MADURA.—In Madura the river Vigay overflowed its banks, and tanks in most instances received full supplies. *Varagoo, Raggy, Bengal Gram, Horse Gram, Green Gram*, and *Gingelly Oil Seeds* were being cultivated, and transplantation

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in *Nunjah* was progressing. The standing crops, including *Cotton* and *Indigo*, were thriving. *Raggy*, *Green Gram*, *Samay*, *Kar*, and *Narayam Paddy* were being cut.

TINNEVELLY.—Unprecedented freshes came down the Tambrapoorni and other minor rivers in Tinnevelly, and caused serious damage to works of irrigation and communication. The *Peshanum* crop looked sickly from submersion and other causes, and there was a decrease in the extent of cultivation owing to destructive rains and want of water in breached tanks. *Samay*, *Raggy*, and *Varagoo* were harvested, but yielded a scanty outturn. The *Cotton* crop was flourishing.

Prices fell in Madura and exhibited a tendency to rise in Tinnevelly.

Both men and cattle were free from disease.

WEST CENTRE.—The rainfall in this section was good, though it was unequally distributed in Coimbatore and Salem.

COIMBATORE.—In Coimbatore, *Horse Gram*, *Cotton*, *Cholum*, *Chillies*, and *Tobacco* were largely cultivated, and the lands under the river Noyel, which hitherto had been lying waste, were brought under cultivation. The standing crops, including *Sambah Paddy* under Bhowany and Ambravatty, were thriving, except in parts of Bhowany Taluq, where excessive rains were reported to have caused serious damage to the crops. *Raggy* and *Kar Paddy* were harvested, and tanks in favoured localities received full supplies.

NEILGHERRIES.—On the Neilgherries, *Ganjay*, *Wheat*, *Buttacadalay*, *Poppy Seeds*, *Vendiam*, and *Potatoes* were thriving, and *Corally*, *Samay*, *Thanai*, and *Raggy* were being reaped.

SALEM.—Dry grains were extensively cultivated in Salem, and the standing crops, dry and wet, were in good condition, although in parts of Salem Taluq they were suffering from grubs. *Paddy*, *Cumboo*, *Raggy*, *Samay*, and a few other grains were harvested, but there was no *Cotton*-picking during the month. The majority of tanks in the district received good supplies.

Prices fell in this section.

Fever and cholera were prevalent in parts of Coimbatore and Salem, and proved fatal in some instances. On the Neilgherries public health was good.

Cattle slightly suffered from disease.

WEST.—The rainfall was slight in these districts.

SOUTH CANARA.—In South Canara the standing second-crop *Rice* was in good condition.

MALABAR.—In Malabar the season was favourable as regards prospects of cultivation.

Prices fell in South Canara and remained stationary in Malabar.

Public health in both districts was good.

Cattle also were, with very few exceptions, free from disease.

Average Bazaar prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency for the month of November 1869, *Fusly* 1279.

DISTRICTS.		PRICES OF GRAIN AND SEA SALT.												RAINFALL.				
		2nd sort rice.		2nd sort paddy.		Cholum.		Raggy.		Horse Gram		Sea Salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Fusly.		Fusly.		Fusly.		Fusly.		Fusly.		Fusly.						
		1278	1279	1278	1279	1278	1279	1278	1279	1278	1279	1278	1279					
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam........	285	280	124	112	134	143	158	126	147	289	290	314	0.0	0.30	0.10	...	0.10
	Vizagapatam..	372	321	167	149	170	202	280	154	176	252	251	296	0.20	1.50	4.70	0.10	1.62
	Godavery.......	272	268	127	124	145	147	142	136	139	234	244	279	0.46	2.31	1.56	0.63	1.24
	Kistna..........	326	334	147	149	165	185	132	154	162	246	273	345	0.37	3.22	3.78	0.87	2.6
	Nellore	347	366	164	174	166	154	150	136	209	262	257	329	2.17	6.76	13.10	9.11	7.78
Ceded Districts.	Cuddapah.. ...	460	421	222	193	222	175	211	163	260	207	317	357	2.17	2.37	6.38	2.19	3.28
	Bellary........	402	370	173	147	131	131	115	113	147	161	378	394	0.08	0.57	0.33	0.07	0.26
	Kurnool.......	444	417	188	187	189	152	175	162	213	242	335	370	1.62	0.83	1.36	0.98	1.20
East Centre.	Madras........	448	464	206	213	249	261	233	232	293	292	267	296	8.29	6.75	7.14	4.89	6.77
	North Arcot. .	403	395	179	173	207	196	210	179	260	209	245	282	4.0	4.0	2.20	2.20	3.10
	South Arcot. .	377	423	180	209	188	222	192	200	248	243	268	317	6.07	17.07	18.93	7.58	12.41
Cauvery.	Tanjore........	310	341	144	141	177	175	143	139	263	241	252	305	14.70	16.50	18.20	10.40	14.95
	Trichinopoly..	376	395	181	188	204	195	184	171	286	232	307	328	8.20	9.67	13.40	4.84	9.27
Southern Section.	Madura........	447	429	200	199	244	160	177	162	346	190	273	304	7.31	7.51	14.61	13.27	10.67
	Tinnevelly	421	432	203	198	219	217	201	183	389	230	326	372	16.08	20.85	19.83	20.91	19.42
West Centre.	Coimbatore ...	479	412	232	190	292	260	222	183	333	248	334	392	1.72	6.63	2.58	4.55	3.87
	Neilgherries..,	640	640	...	...	256	267	320	291	320	320	457	533	...	...	11.65	3.28	7.46
	Salem........	392	366	177	158	227	194	196	157	265	191	291	334	1.16	2.65	4.0	2.30	2.52
West......	South Canara.	343	440	144	163	...	...	246	250	349	287	254	282	5.10	1.50	4.50	2.90	3.50
	Malabar.......	420	389	176	177	...	...	229	197	333	303	307	345	5.50	6.20	3.24	4.92	4.96

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Statement of Cotton and Indigo Cultivation with their Market Prices for the month of November 1869, *Fusly* 1279.

	DISTRICTS.	Cotton. Fusly 1278. Extent.	Cotton. Fusly 1278. Assessment.	Cotton. Fusly 1279. Extent.	Cotton. Fusly 1279. Assessment.	Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo. Fusly 1278. Extent.	Indigo. Fusly 1278. Assessment.	Indigo. Fusly 1279. Extent.	Indigo. Fusly 1279. Assessment.	Market rate of Cake Indigo per Maund of 25 lbs.
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	6,405	11,645	6,204	12,434	150	30	30	30	30	80
2	Vizagapatam ...	13,116	31,717	10,355	18,242	156	1,995	10,869	1,102	8,247	43
3	Godavery ...	6,905	11,299	6,841	9,872	163	422	1,128	1,467	5,125	71
4	Kistna ...	1,51,675	2,21,908	2,15,031	3,10,268	146	6,906	12,127	17,018	33,717	60
5	Nellore ...	20,754	20,075	14,362	16,180	160	17,436	40,559	38,478	89,604	62
6	Cuddapah ...	1,312	1,910	5,921	4,132	120 to 180	531	1,353	323	931	50 to 74
7	Bellary ...	3,20,890	3,55,271	4,82,464	5,13,180	158	5,288	6,068	9,842	14,370	68
8	Kurnool ...	1,88,395	2,18,590	2,73,476	3,16,032	149	21,944	42,638	61,609	95,394	64
9	Madras ...	1	2	1	1	150	6,506	18,469	4,172	13,506	50
10	North Arcot ...	1,658	3,662	1,144	2,243	130	8,584	18,297	7,093	14,245	50
11	South Arcot ...	3,735	7,902	1,682	3,004	166	24,359	46,515	25,755	49,054	45
12	Tanjore ...	791	1,020	1,263	1,668	166	700	2,203	672	1,155	18
13	Trichinopoly ..	5,167	6,160	6,282	6,619	150	100	265	202	508	19
14	Madura ...	54,252	97,872	51,494	94,643	100	31	73	49	124	40
15	Tinnevelly ...	1,41,734	1,43,957	1,22,722	1,26,795	155	203	223	164	139	31
16	Coimbatore ...	93,826	96,595	72,504	69,0 6	145	......	......	......	......	27
17	Salem ...	8,786	13,005	13,517	19,327	220	920	3,637	1,372	6,235	43
	Total...	10,19,397	12,42,590	12,85,263	15,23,656	......	95,955	2,01,449	1,59,348	3,27,379	......

Revenue Board Office,
Madras, 24*th December* 1869.

(Signed) A. MACGREGOR,
Acting Secretary.

ACT OF THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 10th day of December 1869, and is hereby promulgated for general information:—

Act No. XXIV of 1869.

An Act to enhance the price of Salt in the Presidency of Fort Saint George and the Duty on Salt in the Presidency of Bombay.

Preamble.

Whereas it is expedient to enhance the price of salt manufactured and sold in the Presidency of Fort St. George and the duty leviable on salt manufactured in, or imported into, the Presidency of Bombay; It is hereby enacted as follows:—

Repeal of enactments.

1. Act No. VI of 1844, *(for abolishing the levy of Transit or Inland Customs Duties, for revising the Duties on Imports and Exports by Sea, and for determining the price at which Salt shall be sold for home consumption within the territories subject to the Government of Fort St. George)*, Sections 44 and 45, and Act No. VII of 1861 *(to empower the Governor-General in Council to increase the rate of Duty leviable on Salt manufactured in, or imported into, any part of the Presidency of Bombay)*, Act No. XIX of 1866 *(to enhance the price of Salt manufactured and sold under the orders of the Governor of the Presidency of Fort St. George in Council)*, and the Ordinance to enhance the duty on salt in the Presidencies of Madras and Bombay, dated the 4th day of October 1869, are hereby repealed.

Price of salt in Madras.

2. The price to be paid to the local Government for salt manufactured and sold under the orders of the Governor of the Presidency of Fort Saint George in Council for consumption within the territories subordinate to that Presidency shall be 2 rupees for every maund of three thousand two hundred tolahs weight of salt;

Duty on salt in Bombay.

And an excise duty of 1 rupee and 13 annas per maund of three thousand two hundred tolahs shall be levied on salt manufactured in, and a Customs duty of 1 rupee and 13 Annas per maund of three thousand two hundred tolahs shall be levied on

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salt imported either by sea or by land into, any part of the Presidency of Bombay.

Saving of duty in Sindh. 3. Nothing hereinbefore contained shall affect any duty now leviable on salt in the province of Sindh.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) J. I. MINCHIN,

Acting Chief Secretary.

CIRCULAR ORDERS OF THE BOARD OF REVENUE.

No. I.

STANDING No. 391-3.

Government Servants not to be removed for physical unfitness without Certificate.

Proceedings of the Board of Revenue, dated 18*th January* 1870, *No* 352.

Collectors will observe the ruling contained in the following Notification issued by Government:— Government Order, (Public Department,) dated 10th December 1869, No. 1,696.

NOTIFICATION.

Several recent cases of summary dismissal by Heads of Offices of persons in Government employ having suggested the desirability of a rule upon the subject, His Excellency the Governor in Council is pleased to direct that in future Heads of Offices in any Department shall not dismiss their subordinates or remove them from the service upon the ground of ill-health or of physical incompetence to perform their duties, unless they have undergone medical examination and unless a certificate to their unfitness for further performance of their duties has been obtained. Whenever a public servant who is entitled to any allowance upon retirement is so certified to be unfit and removed from the service, application on his behalf should be at once submitted through the proper channel.

No. II.

STANDING No. 228-1.

Collectors to address Board when Stamps not speedily supplied.

Proceedings of the Board of Revenue, dated 24*th January* 1870, *No.* 489.

When from any cause Collectors' requisitions on the Superintendent of Stamps are not complied with speedily and inconvenience to the public seems likely to result, Collectors should address the Board on the subject.

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THE

MADRAS REVENUE REGISTER.

No. 3.] MADRAS:—TUESDAY, MARCH 15, 1870. [Vol. IV.

THE COLLECTOR OF A DISTRICT.
II.

To resume (after so unexpectedly long an interval) our consideration of a Collector and his duties, we now proceed, after having* imperfectly sketched out our idea of a good government for the provinces, to notice, as briefly as may be, the impossible character of a Collector's work as at present constituted, so as to justify in that way also the proposed change of system. In the opinion of many very experienced observers, there is scarcely anything from which the country suffers so much just now, as the unlimited right of appeal. This is a right which, of course, can scarcely be too freely conferred on any people; but its exercise would be rendered far more convenient, if a Collector's (or, as we prefer to call him, a Commissioner's) decisions were final in cases where the Board's are final now; and were it so, we venture to think that the Collector's decisions would be more likely to be in accordance with justice and more appreciated by the people generally. At present† every order he passes, no matter how trivial the subject may be, is appealable, either to the Civil or Sessions Judge, or else to the Board of Revenue; and the consequences appear to us to be exceedingly disastrous. While an appellate authority remains, the Hindu (the Tamulian at any rate) will appeal; and the uncertainty of all things legal is a fact so clearly established now, that no one ever thinks his chance quite desperate, and would almost think himself disgraced if he did not pursue his case to the uttermost limits of his purse. Litigation to the Hindu, it has often been observed, is what politics were to the ancient Greek; and the "last case in Court" forms the favourite topic of discussion under every "Village Tree." If the appellate authority were more regularly constituted, it would not perhaps be so injurious to the influence of a Collector; but when it is known that his careful local enquiries are liable to be set aside by the arbitrary dicta of a sort of Star Chamber in Madras, promulgated by an almost irresponsible Sub-Secretary, the consequences cannot fail to be detrimental to the interests of good government. As if to add to the confusion so created, and to lower his authority still more, a number of *Departments* have been introduced into every district, which correspond, on all manner of topics most intimately affecting the prosperity and *government* of the district, with authorities in Madras and elsewhere, and which studiously, nay, even ostentatiously, ignore the Collector's wishes, and openly express contempt for his opinions. This, in our opinion, is utterly ruinous to anything like a proper

* *Vide Revenue Register* for April 1869.

† Except a *very* few passed by him as a *Magistrate*.

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system of government, and involves, moreover, considerable waste of time; for a Collector, armed with the authority the Board now possesses, could easily control them all, in a far more efficient manner than any Board at Madras, however able, can hope to do, provided, of course, that properly qualified men are selected for Collectors. No Department *in* the district should correspond directly with any authority *outside* of it; neither Survey nor Settlement; Forest Conservancy, nor Railway; Police, nor Jail; Engineering, nor Registration; nor any other whatever. Whatever the Collector considers he can dispose of, he should answer finally; and whatever he thinks proper he should refer to Government *direct*. We shall perhaps find occasion to say something hereafter as to what this Government should consist of. With all these Departments thus strictly subordinated to the head of the district, much of the business of Government might be carried on demi-officially, and by personal intercourse; and, in a Government of strangers like our's, it is quite impossible to over-estimate the importance of this demi-official style of doing business. The system has never been fairly tried. It consists now of a demi-official from the departmental subordinate in the district to his chief in Madras, a second from him to the Collector, a third back again to the chief in Madras, a fourth conveys the result to the patient subordinate; and so at last the answer, which the Collector on the spot would have given in two minutes, is filtered and diluted, and valuable time is wasted till it is of no use when it comes, and the whole case is almost forgotten in the lapse of time. A strong and final executive on the spot, or within a day's post or a morning's ride, would increase the activity and efficiency of every department fifty per cent. How can a Collector feel that personal interest, in his Police for instance, which he ought to feel and *shew*, when his suggestions are either resented as interference (!), or rejected with quiet contempt? It would be worth while for Government to call for a return, shewing the number of inspections of Police stations that have been made by *District* Magistrates since the introduction of the new Police. Such a return would shew clearly how much real interest District Magistrates have taken in the improvement of the police, and how far they have honestly endeavoured to train that agency as their *only* instrument for the suppression and detection of crime. Then, if it should appear that they have never really given their hearty co-operation in the work of organizing the new Police, Government might well consider *why* they have so generally neglected their duty. Did they enter upon such an enquiry, we think they would find that the present state of things was entirely owing to the jealousy born of departmental divisions. We have heard so much of this jealousy, and of the ruin it brings upon district administration, that we (in our model Government) would not hesitate to remove, or even suspend a subordinate for the slightest act of insubordination towards a *Commissioner* such as we have described; but what prospect is there of any such wholesome vigour, when our Commissioner is only a Collector, the head of a "Department" very little, if at all, more respected by those in authority than that of the Police, or the Revenue Survey?

Of course, we are very far from implying that *all*, or even the majority of our present Collectors, have actually allowed their high office to fall into contempt; but we are sure that the direct tendency of the present system is to bring about that result, and we believe that most Collectors would admit the truth of this statement. The amount of work involved in a Collector's office, under the present system, in connection with these various departments—great part of which might, we believe, be dis

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posed of demi-officially under other arrangements—may be partly guessed at by looking only at the official correspondence that passes between the Collector and these several Departments in the course of a single official year. It will be found, we believe, to exceed five hundred letters in an ordinary district, or an average of (say) two letters for every working day.

We are prepared to pursue our subject, as opportunity may present itself, in future issues.

MIRASSI RIGHT.

We have before us a small pamphlet by Mr. Ragoonath Row, formerly Deputy Collector of Tanjore, and now Deputy Collector of Madras. The pamphlet is in the form of a letter addressed to Sir Charles Trevelyan when Governor of Madras. It bears the date of 1860, and treats of the rights of the mirassidars of Tanjore. It is somewhat late to review a brochure ten years old; but we offer no excuse for so doing since the subject is one of general interest to the country, and is one that remains unsettled up to the present day, and will, therefore, without doubt be of interest to our readers.

The pamphlet is a brief resumé of the different reports of Collectors and orders of Government which are favourable to the claims of the mirassidars, on whose side the sympathies of the author are evidently enlisted, since he fails to take notice of any of the numerous arguments which have been urged against those claims. The term "mirassidar" is one, the derivation and exact meaning of which it is somewhat difficult to ascertain. To go back one step, the word, of course, means a person owning, or in possession of, a mirassi. The word "mirassi" is, however, a vague one. It is frequently used as synonymous with the word "maniyam," and in the southern districts of the Madras Presidency the word is thus generally understood. As our readers are probably aware, the word "maniyam" is used with reference to a grant of land given as a reward for services rendered by certain of the villagers. Thus the maniyam land of a Moonsiff or Monigar (literally Mániyakáran) is the emolument that officer receives for the official duty he performs. Supposing, then, that the inhabitants of the southern districts of India are correct in using the word "mirassi land" as an equivalent for maniyam land, we are led to infer that the rights and privileges which the possessor of the maniyam may enjoy arise, not from the individual, but from the land which is attached to the office the individual fills. It is not difficult, if this analogy is allowed, to trace how the word mirassidar has in course of time been used, not only in reference to a village servant, but also in reference to a village cultivator, since the land the ryot cultivates is granted to him in consideration of his payment of a rent to Government. The analogy between the village servant and the ordinary ryot is thus perfect: the *quid pro quo* given by the ryot is money; that given by the village servant are his services; the reward received by both is land.

The claims of mirassidars are of two kinds—firstly, they claim that, as long as they pay a fixed rent settled by Government, they cannot be ejected from the land *they occupy or cultivate*, nor can the rent thereof be raised at option. This claim has been conceded to be correct, not only as regards those persons who style themselves mirassidars, but as regards all cultivators whatsoever. Occupation when accompanied by regular payment is left undisturbed, and the rate of rent remains unchanged, except where a general system of assessment is introduced. Writers on the subject now under discussion generally preface their

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remarks, by entering with considerable detail into the question, whether the proprietary right in the land is vested in the Government, or in the mirassidar. This question, however, appears to us immaterial; we do not propose to enter into an argument as to whether the fact of having paid an immemorial rent is a tacit admission of the superior right of Government to the land which pays, or whether the rent is merely to be considered as a tax levied by Government on its subjects in the same way as it levies a percentage upon incomes. Government is prepared to allow the occupation of all cultivators (whether they are styled mirassidars, ryots, or anything else) to remain undisturbed as long as they pay rent for the land they occupy. The second claim of the mirassidars goes, however, a step further. They urge that, by immemorial custom, the fact of a mirassidar paying rent for cultivated land gives him a right to the uncultivated lands attached to the village, in proportion to the amount of land he cultivates. These uncultivated lands are of two descriptions—Poramboke lands, or lands which cannot be cultivated, such as tank-beds, channels, river-beds, &c., and Anardy Tarass, or land which is not, nor has ever been, cultivated. Of course, the value of land of this latter description varies considerably according to the district. In the dry districts, where the proportion of cultivated land to waste may be as high or higher than 1 to 5, this right is scarcely likely to affect Government interests; but when we turn to wet districts like Tanjore, some parts of Trichinopoly, South Arcot, and Madras, the matter is a very different one. In those districts, every inch of ground is of value, whether cultivated by wet or by dry grains, or whether waste. As from year to year the supply of water increases, so does the amount of land capable of being brought under wet cultivation increase; and what land is left waste becomes yearly of increased value to the respective villages for the purposes of grazing cattle, cutting firewood, &c. Now, if the right of the village cultivators or mirassidars to the enjoyment of these waste lands free of tax is admitted, it is clear that the Government is a loser to that extent of revenue which might otherwise be derived from these lands if brought under cultivation by other persons. It is argued, and with some show of reason, that if no land is left available for grazing or other purposes as mentioned above, the ryots would be unable to provide provender for their cattle, or to obtain those common necessities of life which become requisite to enable them to cultivate the lands for which they pay rent. On a closer examination of this argument, however, it will appear to be unreasonable. Wet cultivation in these districts has increased. Each acre of land brought under cultivation pays rent, (unless specially exempted as inam, or as maniyam); the very fact, therefore, of previous extension of cultivation gives an irresistible precedent for future extension. Again, if we glance at farmers' holdings in England or in Europe, we shall find that the farmer is not dependent upon commons for the grazing of his cattle, or the supply of his fuel; his land, for which he pays rent, is divided into arable, pasture, or plantations. He has *himself* to provide provender for his cattle, or trees to supply him with firewood; in other words, he has to pay rent for land which he uses merely in order to supply himself with the necessaries requisite for the cultivation of his whole farm. Bearing this in mind, we are of opinion that it is evident that, as far as regards the *justice* of the claim, the ryot or the mirassidar is not entitled to the free use of waste land, and that, in the event of Government choosing to allow all waste lands to be cultivated, he cannot complain if he has himself to provide the land for the purposes required. The question, however, then arises, what rent is he to pay for

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it? Is waste land to be given to him now on an assessment fixed for dry crops, and so secure to him the perpetual enjoyment of that land on easy terms, even supposing that in some future time the land thus given over might be converted into wet land owing to improved irrigation schemes and a better supply of water? or supposing the land to be at some future time capable of improvement, and supposing other cultivators to be willing to improve the land and pay an increased rent, is Government to be a loser of the amount of such increased rent because it has given the land on easy terms? These questions are of great importance, and the mirassidar claimants have in reality this point at issue. The pamphlet before us is written with that object in view, since at page 15 we find the author making the following proposition:—

"1st.—To clearly ascertain what portion "of any waste in a village might, without "inconvenience to the villagers, be brought "under cultivation.

"2nd.—To find out the Tarum assessment "thereof, or fix one on it from that of the "neighbouring fields.

"3rd.—To add this to the jummahbundy "amount, and make the sum thus obtained "the maximum amount of tax that the "Government would always demand of the "ryots, allowing at the same time, in "particular cases, such deduction from "the amount so added as the well-being "of the ryots may appear absolutely to "demand.

"4th.—To apportion this settled amount "among the several pungoos, or shares of "the village, and thus determine what each "ryot will have to pay.

"5th.—To give the ryots distinctly to "understand, by proclamation, that no remis"sion will be granted them except in seasons "of very extraordinary distress, but assuring "them at the same time that they might "enjoy untaxed the benefit of any improve"ment they may effect in their holdings, "whether it be the conversion of one crop "land into two crop, of dry into wet, or the "like, except where such improvement is "directly owing to important hydraulic "works executed by the Government, in "which case an additional water-tax might "be levied."

The above rules, which we have given *verbatim*, were proposed by the author as the basis on which to effect a new settlement of the irrigated portion of the Tanjore District. As regards the high lands of that zillah which are unaffected by the irrigation from the Cauvery and Coleroon, he proposes rules slightly modified, but in reality on the same principle, namely, fixing a permanent revenue to be levied on the whole land as it exists at present. Mr. Ragoonath Row appears to have been sensible that these rules might be objected to, for he says, "It may perhaps be objected "that the last-mentioned rule will deprive "the Government of any legitimate increase "of revenue. But I believe that the loss "the Government may thereby sustain will "be more than counterbalanced by the "saving that would result from the removal "of that host of officers, who are now paid "to watch cultivation, the encroachment of "wet and dry land, of two crop on one crop, "&c.; and, even supposing this not to be "the case, what is the sacrifice of revenue "that the proposition involves, but as the "dust in the balance compared with the "numerous and important advantages that "will flow from it—the improvement in the "condition of the land which would add to "the stability of the revenue, the removal "of every baneful interference with the "ryots, the creation of a respectable and "independent body of landlords—the great

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"supporters of Government—and the development of the resources of the country resulting from the vigorous stimulus which would thus be administered."

The above paragraph (which is a fair specimen of Mr. Ragoonath Row's style and language, which is far above the average of that used by native gentlemen of even high education), shows clearly that the advantages to the cultivators would be great, whereas as regards the Government the increase of revenue would not be very material. As regards the "removal of the host of officers" which would be the result if these rules were carried into effect, Mr. Ragoonath Row appears to forget that the officers are, as a general rule, paid in land, and it is questionable whether Government would have the legal right to deprive them of that land, or to make them pay rent for it, simply because the Revenue authorities wished to inaugurate a system less inconvenient than that hitherto in practice. There can be no doubt that to frame a settlement on this basis would be tacitly to admit the right of the cultivators to the lands they lay claim to as they exist at present. In the present article we have confined ourselves merely to the justice of the claim; in a future issue we propose to discuss the legal right of the claim, on what grounds it is founded, and whether those grounds are tenable.

We will leave our readers, therefore, for the present with the broad statement that there is a large quantity of land in the different districts above named which is at the present moment waste, and, therefore, profitless to Government, which land there are many who would willingly undertake to cultivate, and which is capable of wet cultivation owing to the present supply of Government water, but which is debarred from yielding a revenue to Government owing to the existence of the claims of the mirassidars.

CORRESPONDENCE.

THE RENT RECOVERY ACT.

To the Editor of the Madras Revenue Register.

SIR,

There seems in India, as in England, no possibility of drafting an Act through which a coach-and-four may not be driven. Let us look at Sections 4 and 7 in their connection with Section 6.

Section 6 is as follows, "Puttahs and muchilkas *shall* be regularly signed and registered by the curnum of the village in which the lands engaged for are situated." Here the language seems sufficiently definite, and one would scarcely imagine that the real interpretation is that it is merely directory, and not compulsory, as to the signature of, and registration by, the curnum. But at page 244, Vol. IV, Part III of the Madras High Court Reports, the whole matter is "thoroughly explained" in the following

"JUDGMENT*:—In this case we understand the fact to be that the muchilka sued on was given in exchange for a puttah, as required by Sections 3 and 4 of Madras Act VIII of 1865. If that be so, we are of opinion that the suit is maintainable under Section 7 of the Act. We think that Section 6 was intended to impose on curnums the duty of signing and registering, but no more. Had it been intended to be a condition of the right to sue, it would have been expressly so provided in Section 7, and a provision made for compelling registration."

Now, what is the language of Section 7? To avoid reference, so much of it is set out here as is necessary for present purposes:—"No suit brought, and no legal proceedings taken, to enforce the terms of a tenancy shall be sustainable unless puttahs and muchilkas have been exchanged as aforesaid, or unless it be proved that the party attempting to enforce the contract had tendered *such* a puttah or muchilka as the other party was bound to accept, or unless both parties shall have agreed to dispense with puttahs and muchilkas." What does "such" mean? It does not mean, unless the puttah or muchilka shall be precisely that in all respects which it is required to be by Sections 4 and 6, that is, by Section 4, "the puttah shall contain the names of the contracting parties," &c.; and "the muchilka shall, at the option of the land-holders, be a counterpart of the puttah, or a simple engagement to hold according to the terms of the latter," and under Section 6, whether puttah or muchilka "shall be regularly

* Scotland, C. J., and Collett, J.

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signed and registered by the curnum of the village in which the lands engaged for are situated. Can it otherwise be called "such a puttah or muchilka as the other party was bound to accept?"

I am, Sir,
Your's faithfully,
A Tenant.

It seems to us that Section 6 comes into play only after exchange of puttah and muchilka, that is, after the transaction between the parties is complete by exchange. It is then the duty of the curnum begins; but the bare tender of a puttah or muchilka (drawn up according to Section 4) by one to the other is sufficient to give a cause of action.—Ed. *R. R.*

HIGH COURT—MADRAS.

[Appellate Side.]

Innes and Collett, J. J.

Decree for land—direction for issue of puttah—

Where a decree, making over certain lands to the plaintiff, contained also a direction that "the puttah should issue in his name"—

Held *that there was no impropriety in adding a declaration to the decree of the right of the plaintiff to have a puttah in his name, though the terms of that direction were inaccurate.*

Regular Appeal No. 56 *of* 1869.

Narasimachariar *v.* Saravana Pillay and five others.

Plaintiff sued the defendants for recovery of 41¼ cawnies of land in the village of Mangadu under deeds of sale severally executed by them. The first, second, and third defendants pleaded "champerty and maintenance," but that plea was disallowed by the Court. The fourth and fifth defendants denied the plaintiff's claim to all the lands in dispute except 19 cawnies, which they admitted did not belong to them. Subsequently plaintiff relinquished his claim to all the lands except the 19 cawnies. The Civil Judge, Mr. E. B. Foord, decreed that extent of land to the plaintiff, with a direction that "the puttah for that land should be issued in plaintiff's name." The fourth and fifth defendants appealed to the High Court, and contended that the plaintiff was not entitled to the transfer of puttah in his name; that the persons from whom he purchased were not mirassidars or puttahdars; that the plaintiff had only right of occupancy, and was not entitled to the privileges of a puttah holder; and that it had been repeatedly held that there could be no suit for a mere transfer in a revenue register.

Sreenavassa Charriar for the appellants, and Rangiah Naidu for the respondents. The High Court delivered the following

Judgment:— 7th January 1870.

In this case the fourth and fifth defendants are not in a position to deny that the absolute ownership of the 19 cawnies of land in the possession of the first and third defendants has become vested in the plaintiff. They simply contend that they are entitled to retain the puttah for the land in their names. We see no reason why such an ordinary consequence of absolute ownership as the right to a puttah should not follow the property in this case; and as the defendants chose to contest the question, there was no impropriety in adding to the decree a declaration of the right of the plaintiff to have a puttah in his name, though the terms used that "the puttah should issue in plaintiff's name" was, strictly speaking, inaccurate. With this modification we confirm the decree of the Court below with costs.

Bittleston and Innes, J. J.

Right to water—Waiver of part of claim—

On A's suit against B for damages caused by obstructing a channel from which A received water, which had been dismissed on the statute of limitation, being remanded for trial on its merits, the lower Courts found that the Collector in 1827 *had directed that the channel should be re-opened and the obstructions removed, and that A had been in possession ever since and was entitled to the flow of water; and, although A's pleader waived his right to the enforcement of the Collector's order of* 1827, *they directed the enforcement of such order to prevent future litigation—*

Held *that such part of his claim as the plaintiff had abandoned ought not to be awarded to him, and that the decrees of the lower Court ought, therefore, to be modified to that extent.*

S. A. 179 *of* 1869.

Sri Sri Sri Saradi Charana Samantaraya Garu, Zemindar of Jarada, *v.* Sri Sri Sri Viswambararajendra Deo Garu, Zemindar of Chikoti.

This was a suit to recover Rupees 800 as damages for the loss of crops in 1862, 1863, and 1864, occasioned by the defendant having obstructed a channel by which the lands of the village of Kambarigam, belonging to the plaintiff, had hitherto been watered. The suit was originally decided by the District Munsiff of Itchapur on the 8th March 1865. He gave a decree for plaintiff for the whole amount of loss claimed, and ordered the channel to be re-dug at the expense of the parties in proportionate shares, and the calingulah, or overflow escape for the water, of a small hill tank to be re-built with brick and mortar. This decree was reversed by the Civil Judge on appeal, principally on the ground that the claim for damages was barred by the law of limitation. Upon special appeal the High Court reversed the Civil Judge's decision under Section 351, Civil Procedure Code, and remanded the case to the Court of first instance upon the following issues—(1), had plaintiff a right to the flow

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of water from the stream from which he claimed to receive it; (2), was he in possession and enjoyment of such right at any date within the twelve years immediately preceding the date of the suit; (3), what was the loss sustained by plaintiff by the wrongful act of defendant in preventing the flow of water to plaintiff's lands in 1862-3-4, (the right to recover for the latter year depending upon whether or not the special damage claimed had accrued at the time of the bringing of the suit, 2nd December 1864). The District Munsiff found for the plaintiff on all these issues, and passed a decree in every way identical with the one originally passed by the District Munsiff of Itchapur, and ordered the channel to be dug and the calingulah to be built. The defendants appealed to the Civil Court of Berhampore on the grounds that, from the documents marked E. and F. (copies of the Courts' decisions), it did not appear that the Courts had held that the plaintiff had a right to the flow of water in the channel in dispute; that the Collector's orders and the letter from the Sub-Magistrate of Itchapur quoted were not proof that plaintiff had had continuous possession and enjoyment during the twelve years preceding the institution of the suit; that his (defendant's) witnesses proved that plaintiff had no right to take water from the Bavanipuram Channel, and that they had never done it; that, as the first and second issues were not really proved, it was unnecessary to touch upon the third; still that had not been proved; that the High Court, being unable, through insufficiency of evidence, to decide the appeal under Section 353, had remanded it under Section 351; and that the lower Court was, therefore, wrong in accepting as proof the documents and original judgments contained in the original record which the High Court considered insufficient. They further contended that as the plaint only stated that the defendant had caused an obstruction to the flow of water to plaintiff's lands, the order now given with respect to the digging of the channel and raising of the dam was extra to the matter sued for. The Civil Judge of Berhampore, J. H. Master, Esq., was of opinion that the original judgment of the District Munsiff of Itchapur contained a clear statement of the facts of the case, and of his decision thereon after a personal inspection of the spot. In this judgment the District Munsiff had come to the conclusion that the purport of the decision of the Collector, Mr. Byard, (in his third paragraph, dated 27th November 1827), was not that a channel should be newly dug, but that one already in existence should be repaired and the obstructions removed. The Munsiff also stated that, with the exception of losing the course through two fields which belonged to the defendant, he could trace the channel a long distance, thus disproving the defendant's statement that there was no water-course in existence.

The present District Munsiff, after taking a few more depositions and receiving one or two documents, passed judgment precisely to the same effect. The Civil Judge himself fully concurred in these decisions. He further was of opinion that with regard to the first issue the copies of decrees of the late Adawlut and Provincial Courts, produced to prove plaintiff's right to the flow of water, completely established that right; for, although the action was one for damages, yet the decree expressly provided that the channel was to be continued as before. This was in 1835. From a perusal of all the documentary evidence and from the evidence adduced, no other inference could have been drawn but that the plaintiff had a right to the flow of water; that he and his ancestors had been in possession and enjoyment of such right up to 1862. The loss occasioned since then had been fully proved, and it had also been shown that the loss connected with 1864 occurred previous to the institution of the suit. With reference to the ground of appeal that no portion of the original record should have been made use of as evidence, because the High Court had not been able to form a judgment on it and had been obliged to remand it, the Civil Judge held that the cause of the remand was the incorrectness of the judgment of the lower Appellate Court which had disposed of the case as barred; the High Court had not entered at all into the merits of the case as laid down by the original judgment of the District Munsiff of Itchapur. As to the second issue, the argument as to the insufficiency of the firmanas of Messrs. Bannerman and Forbes were not worth much, as there was plenty of evidence without those documents. With regard to the order to remove the obstruction, &c., though at first sight it appeared extra to the plaint, and though the plaintiff's pleader had verbally announced that the plaintiff would not ask the Court to enforce Mr. Byard's decision, yet the Judge was of opinion that not to give the order would be only to open a source of further litigation; he, therefore, upheld the decision of the lower Court, and dismissed the appeal with all costs. From this the defendant appealed to the High Court. Sloan for the Appellant; Miller for the Respondent. The High Court delivered the following

Judgment:—9th February 1870.

In this case we think that that part of the decree of the Civil Judge cannot be upheld in which he confirms the decree of the District Munsiff directing the enforcement of the order of Mr. Byard made in 1827. It appears to be unquestionable that in the first appeal trial, the plaintiff, through his vakil, waived the claim he originally made to have that order enforced; and whether, in the absence of this waiver, we could, or not, have come to the conclusion that that part of the decree would have been properly made, it seems clear that

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such part of his claim as the plaintiff has abandoned ought not to be awarded to him. We shall direct, therefore, that the decree be modified to this extent. The plaintiff ought to have the costs of the special appeal first made, and the defendant the costs of the present special appeal.

HIGH COURT—CALCUTTA.

MACPHERSON AND JACKSON, E., J. J.

Ganga Marayan Das and others (defendants) v. Saroda Mohan Roy Chowdhry (plaintiff.)*

Suit for rent—Co-sharers—Enhancement—Proof of receipts.

A landlord, one of several co-sharers, cannot sue a tenant of the joint estate for his separate share of the rent, unless the tenant has paid or agreed to pay to him separately.

In decreeing enhanced rent it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed.

To prove receipts it is not necessary to produce the writer of them. The ryot can prove his own receipts.

Baboos *Mahendra Lal Shome* and *Kedar Nath Chatterjee* for appellants.

Baboos *Srinath Das* and *Ramesh Chandra Mitter* for respondent.

The facts are sufficiently set out in the judgment of

MACPHERSON, J.—I think that this case ought to be remanded in order that it may be tried *de novo* by the Judge whose present decision is in various respects defective. The plaintiff sues as one of several joint proprietors to recover a certain proportion of rent which he says is payable by the defendants in respect of lands occupied by them. The co-sharers are not parties to the suit. The defendants have throughout pleaded that, as the plaintiff holds this property jointly with others, the present suit is bad in the absence of the co-sharers. The first Court held that the proprietors were in the habit of making collections separately, and, therefore, that the suit would lie.

The Judge upon this part of the case simply says:—" There is no doubt about the extent of the " plaintiff's interests, and there are several pre- " cedents to the effect that a shareholder can sue " to enhance the rent if his share is definitely " known and his title is not contested." The law, as laid down by the Judge here, is correct only to a certain extent. If the plaintiff can prove that the defendants have heretofore recognized him as being the proprietor of a particular share of the property and have paid to him separately a certain proportion of the rent, then no doubt the suit will lie against them without the other joint proprietors being made parties. But, unless the plaintiff either proves that the defendants have paid their rent to him separately or proves an express agreement on their part to pay to him separately, the suit will not lie in the absence of the other shareholders. The Judge must consider carefully what the facts are with reference to this part of the case.

The next point on which the judgment of the lower Appellate Court is defective is as to the reasons for which, in the Court's opinion, the defendants are liable to pay rent at an enhanced rate for the year 1274. The defendants denying their liability to have their rents enhanced, the judgment should say distinctly on which of the grounds on which enhancement is claimed by the plaintiff the enhancement is decreed. It is not enough for the lower Court to find generally that the plaintiff is entitled to rent at an enhanced rate; there must be a distinct finding as to the ground on which he is so entitled.

With reference to the contention of the defendants that they have a right of occupancy, it appears to me that the Judge has quite misconceived the nature of the evidence necessary to be adduced by the defendants in order to prove certain *dakhilas* and other documents put in by them. The Judge says:—" I am obliged to concur with the Deputy " Collector that the receipts filed are not properly " proved by the best evidence, *i. e.*, that of the " writers, when alive in all cases." The Judge apparently labours under the impression that when the writer of a document is alive the document cannot be proved save by the evidence of that writer; at any rate, that it is the duty of the person who propounds the document to bring the writer before the Court. But there may be many people who can prove a document quite as well as the writer of it; and a person who wishes to put a document in evidence is under no sort of obligation to call the writer as his witness if he has any other sufficient means of proving what he wants.

In the case of a receipt granted to a ryot, whether the writer of the receipt be or be not alive or producible, it would be *primâ facie* quite sufficient if the ryot were to depose that he himself, on paying his rent, had received the receipt from the zemindar's goomastah to whom he paid his rent, and that the goomastah gave it to him, saying that it was a receipt for the rent so paid. So also it would be sufficient if he swore he saw the zemindar or goomastah sign the receipt, or if he were to produce a witness (by which term I do not mean one whose name appears in the document as attesting its execution) who deposed that the receipt was written and signed by the goomastah in his presence. The evidence of the writer of a paper is not necessarily any better evidence than would be that of other persons who can of their own knowledge speak to such facts as will satisfy the Court that the document is really what it purports to be.

The lower Appellate Court does not seem to have wholly discredited the documents produced by the defendants. On the contrary, the Judge says:— " I do not entirely concur with the Deputy Collec- " tor in his remarks on the *dakhilas* * * *; " they are simply not proved." It appears to me, therefore, that the Court must, in re-trying the case, be very careful to see that it does not reject, as being unsupported by evidence, documents which are, in fact, supported by good legal evidence: of the weight to be attached to the evidence before him, the Judge will, of course, form his own opinion.

* Special Appeal, No. 102, of 1869, from a decree of the Officiating Judge of Rungpore, dated the 18th November 1868, affirming a decree of the Deputy Collector of that district, dated the 29th July 1868.

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The judgment of the Judge is reversed and the case is remanded to him, in order that it may be tried and decided anew with reference to the above remarks.

The appellants will get their costs of this appeal.

JACKSON, J.—I concur in the remarks of Mr. Justice Macpherson, and in remanding the case for a fresh decision.—*8th June* 1869.—*Bengal Law Reports, Vol. III, Part XV.*

BAYLEY AND HOBHOUSE, J. J.

Lasmani Debia and others (defendants) *v.* Mahommed Hafezulla, (plaintiff.)*

Suit to recover share of malikana—Jurisdiction of Small Cause Court—Act XXIII of 1861, *Section* 27—*Special Appeal.*

A suit to recover share of malikana, which the defendant had realized from the Collector, is a suit for recovery of a sum of money which has been taken away by the defendants to the damage of the plaintiff, and is, therefore, cognizable by the Small Cause Court; and under Section 27, *Act XXIII of* 1861, *no special appeal lies from a judgment passed in appeal in such a suit.*

Baboo *Nalit Chandra Sen* for appellants.

Baboo *Mahini Mohan Roy* for respondent.

HOBHOUSE, J.—The nature of this suit is accurately described in the first paragraph of the first Court's judgment. It is there said that "the "plaintiff has brought this action for the recovery "of his share of malikana of Chur Deskandi formed "by the re-formation of his mehals, amounting to "Rupees 62 and Annas 3 out of the entire Rupees "311 and Annas 2 which the principal defendants, "Nos. 2 to 8, have realized from the Collector of "Mymensing (defendant No. 1), on the allegation "that the said principal defendants have taken the "whole amount without giving his share."

From this statement of the plaint it appears that the claim was to recover a sum of money to the extent of Rupees 62 on the allegation that the defendants had deprived the plaintiff of that money by keeping it themselves.

Both the Courts below have given the plaintiff a decree, and the defendants now appear as the special appellants before us. But a preliminary objection is taken by the pleader for the plaintiff to the effect that under the provisions of Section 27, Act XXIII of 1861, no special appeal will lie in this case. He urges that the suit was of a nature cognizable by a Court of Small Causes; that it was a suit for damages, and that, as is admitted, the amount of the money in suit was below Rupees 500. It is contended by the pleader for the special appellant that the matter in suit was not properly for damages; that it was a question of malikana, or money derived from a proprietary interest in land. But it seems to us on the face of the suit that it was a suit for damages. Whatever was the original source from which the money was derived, still it was a sum of money which was taken by the defendants to the injury of the plaintiff, and it, therefore, represented that which the plaintiff had been endamaged by the defendants. Clearly, therefore, the matter in dispute was a matter of damages. It is next, however, contended by the pleader for the appellant that the suit was not cognizable by a Court of Small Causes; that a question of right was raised and determined in that suit; and that such a question is not one cognizable by a Court of Small Causes. We think, however, on a perusal of the plaint itself and on the understanding between the parties as represented by the statements on record as to the point at issue, that no question of right was determined, and that, though such a question was raised, yet it was simply raised incidentally in order to the determination of the question of damages. The plaintiff did not sue to have his right established to a particular share in the land from which malikana was derived. He simply asserted that share, and then claimed to recover the money due in reference to that share. And the case seems to us to be clearly of the nature contemplated by the decision of the Full Bench, on which the pleader for the special respondent relied.* The suit was, in fact, a suit to recover a certain sum of money, and a question of right was simply raised as a question incidental to the question of the recovery of the money. We think, therefore, that the provisions of Section 27, Act XXIII of 1861, bar a special appeal in this case, and we, therefore, dismiss this appeal with costs.—*8th June* 1869.—*Idem.*

BAYLEY AND HOBHOUSE, J. J.

Sadat Ali (defendant) *v.* Srimati Sadattunnissa and others (plaintiffs†.)

Suit to eject ryot—Jurisdiction of Civil Court—Act X of 1859, *Section* 23, *Clause* 5—*Collector.*

A suit by a zemindar to eject a ryot who holds on after the period of his lease is cognizable by the Civil Court, and not under Clause 5, *Section* 23, *Act X of* 1859, *by the Collector.*

Baboo *Akhil Chandra Sen* for appellant.

Baboo *Girijasankar Masumdar* for respondents.

HOBHOUSE, J.—This was a suit for possession of lands, the plaintiffs' allegation being that the defendant held those lands on a lease which expired in the year 1227 (1820), and that after the expiry of that lease the defendant refused to turn out, and thereby gave the plaintiff his cause of action.

The defendant set up an istemrari patta, and pleaded in the first Court that the Civil Court had no jurisdiction, the case being one which was determinable only by the Revenue Courts under the provisions of Clause 5, Section 23, Act X of 1859.

On the question of the jurisdiction the first Court found for the plaintiff, but on the merits it dismissed the case. The question of jurisdiction was not determined by the lower Appellate Court, nor was it raised there, and on the merits the lower Appellate Court found against the defendant's istemrari tenure, and gave the plaintiff a decree for possession.

In special appeal it is urged that under the provisions of Clause 5, Section 23, Act X of 1859, the Civil Court had no jurisdiction. That clause,

* Special Appeal, No. 2,327, of 1868, from a decree of the Additional Subordinate Judge of Mymensing, dated the 3rd June 1868, affirming a decree of the Munsiff of that district, dated the 15th December 1866.

* Case referred to High Court from Small Cause Court of Kishnaghur; August 26th, 1863.

† Special Appeal, No. 3,014, of 1868, from a decree of the Subordinate Judge of Chittagong, dated the 15th August 1868, reversing a decree of the Munsiff of that district, dated the 11th February 1868.

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for the purposes of this suit, declares that "all "suits to eject any ryot on account of a breach of "the conditions of any contract by which a ryot "may be liable to ejectment, shall be cognizable by "the Revenue Courts only."

The question, therefore, before us is whether the suit was a suit to eject a ryot by reason of the breach of the conditions of any lease by which that ryot was liable to ejectment. Clearly this was not the allegation of the plaintiff, nor the issue between the parties. The plaintiff did not say that, under the terms of the contract between him and the ryot, the ryot was liable to ejectment; but what he said was that there was no contract between him and the ryot; that whatever contract there had been had expired, and that, therefore, the ryot held on, not contrary to any conditions of a contract by which he was liable te ejectment, but as a trespasser without any contract at all; and the ryot himself on his part denied that there had ever been any contract of the nature set up by the plaintiff or that he was a trespasser, and set up another contract in respect of which the Courts have found against him. The case, therefore, is clearly in our judgment one cognizable by the Civil Court, and so the special appeal is dismissed with costs.——12th June 1869.—*Idem.*

KEMP AND GLOVER, J. J.

Bhuli Sing and others (plaintiffs) v. Mussamut Nehmu Bhu (defendant.)*

Malikana—Regulation VIII of 1793—Recurring cause of action—Limitation—Act XIV of 1859, Section 18, Clause 16.

HELD (by GLOVER, J.) *that malikana is rent under Regulation VIII of 1793; that a cause of action for recovery of arrears of malikana is a recurring cause of action; and that failure to recover arrears for more than twelve years would not bar the right to recover for such period as have not been barred by the Statute—Clause 16, Section 1, Act XIV of 1859—that is for a period of six years.*

HELD (by KEMP, J.) *that the suit was barred as no malikana had been paid for more than twelve years.*

THIS was a suit for recovery of malikana from the defendants. The defendants set up (*inter alia*) that the suit was barred by limitation.

The Principal Sudr Ameen held that the plaintiff was entitled to recover the malikana from the defendants.

On appeal the Judge held that the plaintiff had failed to prove that he had received any malikana within twelve years of suit, and, therefore, the claim was barred by limitation.

The defendant appealed to the High Court.

Baboos *Kalikrishna Sen* and *Nilmadhab Sen* for appellant.

Baboo *Mahes Chandra Chowdhry* and Mr. *Gregory* for respondent.

GLOVER, J.—In this matter I am compelled to differ with my brother Kemp and with the learned Judges of other Division Benches. I need not say, therefore, that my opinion is come to with much diffidence.

It appears to me that malikana is in the nature of rent. It represents the profit of the proprietor derived from the rents of his estate, and was so understood apparently by Government at the time of the perpetual settlement. In Regulation VIII of 1793, Section 44, malikana is called "an allowance in consideration of proprietary rights," and farmers are directed (Section 45) to pay it monthly according to the "kistbandi fixed for the Sudr jumma." Payment of malikana was enforced in the same manner as arrears of rent. (Section 46.)

Malikana, therefore, has all the elements of rent. It represents the profit which the proprietor would ordinarily receive from the letting of his land, if he continued in occupation thereof, and as the recipient never ceases to be proprietor, although the lands may have been let in lease to others, what he receives as malikana seems to me never to cease to be rent.

If it be rent, then, as it is due only at certain times of every year, failure to pay must, I suppose, be considered as giving a continually recurring cause of action and enable a proprietor to receive all arrears of malikana that may not be barred by the Statute: in the present case, for instance, the proprietor would be able to recover back dues for six years?

KEMP, J.—This is a suit to recover malikana. The Judge found that the plaintiff had not been able to prove receipt of any malikana during a period of twelve years prior to suit. The suit of the plaintiff was, therefore, dismissed as barred. I am of opinion that this decision is correct under the rulings of this Court in *Mussamut Ozerun* v. *Baboo Heranund Sahoo*,* *Heranund Sahoo* v. *Mussamut Ozerun*,† and *Badarul Hug* v. *The Court of Wards*.‡ The appeal is dismissed.—14*th June* 1869.—*Idem.*

JACKSON, L. S., AND MARKBY, J. J.

Srimati Saudamini Dasi, mother and guardian of Shama Charan Mitter (one of the defendants) v. Srimati Thakomani Debi (plaintiff.)§

Suit for money paid as rent—Jurisdiction of Civil Court.

The plaintiff sued to recover money, which she had paid as rent to the zemindar under a decree of the Revenue Court, after she had already paid her rent to his Goomastah.

HELD *that the suit was not cognizable by the Civil Court.*

Baboos *Ashutash Chatterjee* and *Ashutash Dhar* for appellant.

Baboos *Gopinath Mookerjee* and *Hem Chandra Banerjee* for respondent.

JACKSON, J.—This case is very clear. The plaintiff alleges that she had paid the rent to the zemindar's goomastah or agent. Subsequently a suit was brought against her by the zemindar, and she was compelled to pay over again the rent which she had already paid. The present suit is, in fact, to recover, by decree of the Civil Court, the money which she has had to pay under the Revenue

* Special Appeal, No. 701, of 1869, from a decree of the Judge of Gya, dated the 7th January 1869, reversing a decree of the Principal Sudr Ameen of that district, dated the 10th July 1869.

* 7 W. R., 336. † 9 W. R., 102. ‡ 10 W. R., 302.

§ Special Appeal, No. 3,325, of 1868, from a decree of the 1st Subordinate Judge of Hooghly, dated the 27th November 1868, reversing the decree of the Munsiff of that district, dated the 23rd July 1868.

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Court's decree. It seems to me that the decision of the Munsiff, who held that the suit could not lie, is quite correct. The Principal Sudr Ameen was wrong in thinking that the suit was cognizable in the Civil Court, and I think also that the precedent, *Gocool Chunder* v. *Ali Mahomed** referred to by him, is quite inapplicable. It relates to a different subject. I think, therefore, that the decision of the Subordinate Judge must be set aside, and that of the Munsiff restored with costs.

Markby, J.—I am of the same opinion.—*28th June* 1869.—*Idem.*

Bayley and Hobhouse, J. J.

Hari Kishor Dutt and others (plaintiffs) *v.* The Collector of Dacca and another (defendants.)†

Nadi Bharati—Accretion.

Nadi Bharati, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was released by the Resumption Authorities.

Mr. *G. C. Paul* and Baboos *Chandra Madhab Ghose* and *Ananda Chandra Ghosal* for appellant.

Baboo *Jagadanand Mookerjee* for respondent.

Bayley, J.—The plaintiff in this case sued for possession of two plots of land as belonging to his Patni Mehal, which he says he acquired from one Aka Golam Ali. The plaintiff's allegation was that his cause of action arose from the fact of the lands being demarcated in Magh 1264 (1857) as Jagir and Khas Mehal lands in the Dacca Collectorate, and that then his lessor, Golam Ali, and he himself were dispossessed. The defendants pleaded limitation and their right to the lands as Jagir and Khas Mehals.

The first Court held that the suit was barred by limitation.

In appeal the Judge records (and this is not disputed) that the whole matter of appeal was confined to an area of 3 kanis, 14 cowries of land, in plot No. 2 only. The Judge upheld the decision of the first Court on this point. He found that the lands in suit belonged to the defendants' Jagir and Khas Mehals. The plaintiff appeals specially, and in special appeal there is no contention as regards the lands in plot No. 1. The special appeal is only limited to the 3 kanis, 14 cowries of the lands in plot No. 2.

It is urged that the lower Appellate Court has not tried the question raised in the plaint and in the case throughout, viz., that plot No. 2 was "Nadi Bharati" (land raised out of the river) of the plaintiff's property released by the resumption officers, that is to say, the plaintiff's contention is that by the resumption proceedings, the river, measured then to contain 2¼ drones, was made over to him as part of the estate which would not be resumed, but was released with other property to him. The plaintiff alleges that the portion of the lands marked A. in the Ameen's map represents the land which, in fact, had taken the place of the water comprised in the property released to him in the 2¼ drones above mentioned.

On the other side, Baboo Jagadanand Mookerjee for special respondent contends that the point of limitation has not been adjudicated by the lower Appellate Court, although that point formed the basis of the decree of the first Court.

It appears that the lower Appellate Court has found as a fact that the land in suit was an accretion to the defendants' property; but the Court has not tried the point contended for by the plaintiff, viz., that the 3 kanis, 14 cowries of the land which formed the "Nadi Bharati" or land raised out of the water, and taken the place of the water of the river, were not accretions, but merely substitution of land for water of the river 2¼ drones, which were released to the plaintiff by the resumption officers. Nor has the lower Appellate Court decided the point of limitation which was raised by the defendants. In both these respects there seem to us to be defects in the investigation of the case by the lower Appellate Court affecting its decision on the merits.

We, therefore, remand the case to the lower Appellate Court, to be re-tried on the evidence on the record on the following issues:—

1*stly.*—Whether limitation has barred the plaintiff's suit; and if not

2*ndly.*—Are the 3 kanis, 14 cowries of land in plot No. 2 claimed by the plaintiff as "Nadi Bharati" actually lands which have taken the place of the water of the river released to him in the 2¼ drones specified in the order of release by the resumption authorities.

The costs of this remand will follow the result.—*3rd July* 1869.—*Idem.*

HIGH COURT—BOMBAY.

Hari *bin* Joti *v.* Narayan Acharya.

Inamdar—*Rent—Power to raise rent—Government survey.*

An inamdar, *though he cannot eject his tenants who have been in possession before the grant of the* inam, *as long as they pay the rent due for their land, may nevertheless raise such rent at his pleasure, (they not having acquired a prescriptive title), and is not restrained in doing so by the rates fixed by the Government survey.*

Special Appeal No. 534 *of* 1868.

This was a special appeal from the decision of A. C. Watt, Acting Assistant Judge at Sattara, in Appeal Suit No. 239 of 1868, amending the decree of the Munsiff of Sattara.

The plaintiff, Narayan Acharya, sued to recover from the defendants, Hari Joti and others, rent for the year 1863-64 for some land which he alleged they had held from him, it being his ancestral *inam.* The plaintiff alleged that, as he had a right to demand any rent he pleased, in October 1862 he sent a registered notice to the defendants saying that they must pay Rupees 150 a year. This they did not do, but paid Rupees 75 only. He, therefore, sued to recover the balance from the defendants severally.

The defendants answered that the land was their *miras;* that in the time of the Maharajah they paid the plaintiff Rupees 80 *chandvadi;* that by the survey the assessment was fixed at Rupees 107; that they were not liable to pay the amount demanded by the plaintiff, since he has by his

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* 10 W. R., 7.

† Special Appeal, No. 616, of 1869, from a decree of the Judge of Dacca, dated the 17th December 1868, affirming a decree of the Sudr Ameen of that district, dated the 25th March 1868.

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sanad a right to demand Rupees 80 only, and that the plaintiff had sued to eject them but had failed to do so.

The suit was brought in the Court of the Mamlutdar; but under the new Act* it was transferred to that of the Munsiff, who found that the amount demanded by the plaintiff was excessive, but that the defendants were liable to pay what was demanded.

The issues framed on appeal were—

"1. Had the plaintiff a right to demand Rupees 150 rent for the land?

"2. Have the defendants proved that they have acquired a prescriptive right to enjoy the land at any less rent?

"3. Did the defendants pay the *judi*; and, if so, what ought to be deducted on that account?"

The finding of the Assistant Judge on these points was—

"On the first two points the appellant certainly does not rely much, and all I need say is that, unless under certain circumstances the *inamdar* has a perfect right to raise the assessment of his land, and this right was recognized by Government in what are called the Joint Rules at the time of the survey.

"On the second point the defendants have not proved that they have had the land at an uniform assessment for such a time as has given them a prescriptive right to pay that uniform assessment in future. In fact, the defendants' *kaifayat* itself almost contains an admission that they were liable to pay the survey assessment, which was an increase over their former assessment, and they seem to have paid the higher rate, namely, Rupees 107. Their payment, therefore, has not been uniform for thirty years.

"On the third point I find, from the evidence afterwards produced, that the defendants did pay Rupees 33-7-0 as *judi*; and, as this is a charge which the plaintiff as *inamdar* is liable for, both parties' pleaders admit that it must be deducted. I, therefore, deduct this sum from the amount awarded by the Munsiff, and find for the plaintiff in Rupees 41-9-0 with costs in proportion."

The case was heard before Couch, C. J., and Gibbs, J.

Dhirajlal Mathuradas for the appellants:—When the land was given in *inam* on the 3rd November 1829 by the Rajah of Sattara, it was assessed at Rupees 60. In 1860 the plaintiff sued to recover possession; but his claim was rejected on the ground that the *inamdar* was the assignee of the assessment, and that the defendants were in possession when the assignment was made. He then sent a notice to increase the rent. It is contended that he has no right to levy more than the rates fixed by the survey. The defendants were tenants prior to the *inam* grant, (*vide* para. 11 of Exhibit No. 31). There was a general survey in the country, and the land in dispute was surveyed and assessed at Rupees 107. [Couch, C. J.—The *inamdar* cannot deprive the tenants of possession, because they had it before the grant and under the Government; but he is not bound to observe the Government rules in regard to assessment.] The question is, whether there is any limit to the *inamdar's* right to increase the rent. [Gibbs, J.—The *inamdar* having to live on his *inam* may fairly levy a higher rate than what is levied by Government, but if the assessment is such as to show that the object in putting the excessive rent on is virtually to eject the tenant, the case would have to be considered.] The plaint does not seek to make all the defendants liable jointly.

Vishvanath Narayan Mandlik for the respondents.

Per Curiam:—The Court amends the decree of the Acting Assistant Judge by ordering that Rupees 41-9-0 be paid by the several defendants in the proportions in which Rupees 75 are claimed from them in the plaint. The costs of the special appeal to be borne by the special appellant.—*1st February 1869.—Bombay High Court Reports, Vol. VI, Part I.*

* Bombay Act II of 1866.

Nanabhai Rustamji *v.* Pestanji Jamsetji.

Tenant from year to year—Notice to quit—Six months' notice.

When there is no custom of the country to the contrary, six months' notice to quit is proper notice. This period must have elapsed before the plaint is filed, and the time occupied in the suit before decree cannot be counted.

Special Appeal No. 635 of 1868.

This was a special appeal from the decision of N. M. W. Daniell, Acting Judge of the district of Surat, in Appeal Suit No. 120 of 1868, confirming the decree of the Munsiff of Balsar.

The plaintiff brought this suit to recover from the defendant possession of certain land. He also claimed to recover rent for the same for two years and ten months. The following is a translation of the agreement under which the defendant held the land from the plaintiff:—

"I will pay you every year the amount of the said rent as it falls due. If I do not pay the rent and you ask (me) to vacate your land, I will then (immediately) duly vacate and make over the land to you. If you call upon me to vacate the land and if I do not vacate it or even pay the amount of the rent, you are at liberty to compel me by a suit to vacate the land."

The defendant replied that only eight yards of the land belonged to the plaintiff; that the land on the north side did not belong to the plaintiff alone, but that a portion belonged to one Kolobhai; and that rent was due only for the current year.

The Munsiff held that the plaintiff was entitled to recover possession of the land, and that the claim for rent was proved to the extent of Rupees 24-2-8.

In appeal the Acting Judge delivered the following judgment:—

"The appellant argues that, according to the terms of the lease, the respondent can only recover possession if the appellant fail to pay the rent. I do not see that this point was distinctly raised in the lower Court; but it is one which may be considered now, as the appellant's arguments are confined to the virtue of the bond. I do not read the bond to mean that the owner is barred from recovering so long as the rent is paid. The clause says that, if the rent be not paid, the owner may at once resume the land. The lease is for no definite period, and to construe the lease as an interminable instrument at the option of the appellant would, in my opinion, be a misinterpretation of the agreement, and would be inequitable. The clause

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seems to me to mean that the appellant, so long as he pays rent, can prevent the respondent recovering immediate possession if cause be shown for delaying recovery.

" It is argued that in the bond it is agreed that the rent shall be paid annually. The present award has been for ten months' rent. The cause of action could not arise until the expiry of a year.

" On the first issue I rule that the respondent can recover possession of the land; on the second issue, although the terms of the bond are for the payment of an *annual* rent, I consider in equity that the respondent is entitled to the rent for the portion of the year preceding recovery, and that the right of recovery arose when he took action to recover possession of the land.

" I rule that the claim to rent is proved to the extent awarded in the lower Court. The decree of the lower Court is confirmed with costs."

The case was heard this day before Couch, C. J., and Gibbs, J.

Nanabhai Haridas for the appellant:—The Judge has held that rent was not due at the time when possession was demanded, and we had no notice of the tenancy being determined.

Shantaram Narayan for the respondent:—The lease is not terminable only by default of payment. Whether we have put an end to the lease has not been determined. Here the period occupied by this suit was a sufficient notice of the determination of the tenancy as ruled by this Court: *Nasavanji Hormasji* v. *Narayan Trimbak.**

Couch, C. J.—The lease (No. 2) cannot be construed as creating more than a yearly tenancy, as we find no words in it indicating that the tenancy was to be for a longer period, or of a permanent nature. It was by its terms determinable by failure to pay the rent annually, or by a reasonable notice. A Court of Equity will relieve upon payment of the rent, when possession is demanded on the ground that the rent due had not been paid. Now, what is a reasonable notice depends upon the custom of the country; and, in the absence of any custom, six months' notice would, I think, be a fair one.† In order to enable the plaintiff to recover in this case, he should show a failure of payment and a demand of possession, or that he had determined the tenancy by a notice. The plaintiff sued for rent for two years and ten months; but, on the defendant's alleging that he had paid the rent for two years, the plaintiff gave up his claim for that, (*vide* Exhibit No. 9). The motive under which the plaintiff did this does not appear, but the claim was withdrawn, and the rent found due was only for ten months; consequently, we cannot hold that there was a failure to pay the rent. We must, therefore, consider whether there was a notice to quit. The plaint was brought soon after the demand for possession was made, so there was no notice, and I cannot assent to the doctrine that the defendant can avail himself of the time occupied by this suit. We must, therefore, reverse the decrees of both the lower Courts on the ground that the tenancy had not been determined when this suit was instituted. The plaintiff will be at liberty to bring a fresh suit upon a determination of the tenancy since the institution of the present suit, either by a proper notice or by a failure to pay rent.

* 4 Bom. H. C. Rep. A. C. J. 125.

† *Vide* Sec. 48 of Bombay Act I of 1865.

Gibbs, J.—I concur. With regard to the case of *Nasavanji* v. *Narayan (supra)* in which we held that the institution of the suit, which had lasted for more than two years, might be held to be a sufficient notice to quit, the facts were very peculiar. There, the agent of an *inamdar* gave lands on *suti* tenure without the consent of the *inamdar*, and it was found by us that the agent was guilty of fraud. It was urged there also that there was no notice to quit, but the tenants were considered *particeps criminis*, I think, and, therefore, we thought they might be turned out without any notice.

Couch, C. J.—If so, the tenants were not entitled to any notice to quit, seeing that they had got the land from an unauthorized person.—*Decrees reversed.*—*2nd March* 1869.—*Idem.*

Lakshuman Ramji *v.* Ramlal *valad* Mahipati.

Limitation—Mirasdar—*Land allowed to lie waste by* Mirasdar.

Where a Mirasdar *left his* miras *in* 1850 *without executing a* razinama *resigning it, and the* miras *lay waste until* 1855, *when the defendant took it up and cultivated it,*

It was held *that the cause of action of the* Mirasdar *arose in* 1855, *when the* miras *was taken up by the defendant.*

Special Appeal No. 53 *of* 1869.

This was a special appeal from the decision of M. B. Baker, Assistant Judge of the district of Khandesh, in Appeal Suit No. 28 of 1867, reversing the decree of the Munsiff of Tengora.

Lakshuman Ramji Patil in 1866 sued Ramlal valad Mahipati to obtain possession of his *miras* land, which, in 1850, when he left his village, he had made over to Ramlal on condition that the latter should give up possession to him if he ever returned to the village.

The defendant replied that the field was Government land; that the plaintiff never allowed him to cultivate it, nor did he (the defendant) agree to give it up to the plaintiff; that the field was waste from 1847 to 1854-55; that the defendant cultivated it in 1855-56; and that the plaintiff's claim was barred by Clause 12 of Section 1 of Act XIV of 1859.

The Munsiff finding that the land was the plaintiff's *miras*, awarded him possession of it. In appeal the Assistant Judge reversed the Munsiff's decree, observing—

" The respondent's *vakil* has urged that, as the appellant has not been in possession for thirty years, he has no title. I do not think this argument is good, for it appears that the respondent simply let the land lie waste in 1850, and that the appellant took it up in 1855 or 1856 from Government and not from the respondent. Hence I consider that S. A. No. 334 of 1867, *Arjuna valad Bhiva* v. *Bhavan valad Nimbaji** is on all fours with this case, and that, as the respondent gave up his land by allowing it to lie waste in 1850, the period of limitation is to be reckoned from that time, and that the respondent is not dependent upon prescription for his title. Evidence has been adduced to show that the appellant allowed the respondent to cultivate half the land; but I do not

* 4 Bom. H. C. Rep. A. C. J. 133.

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consider that this can be looked upon as such an acknowledgment of the respondent's proprietary right as to warrant the period of limitation being reckoned from the time the appellant allowed the respondent to cultivate, so that, as alleged by the respondent, the cause of action should be considered to have arisen when the appellant refused to let him cultivate any longer."

The case was heard this day before COUCH, C. J., and WARDEN, J.

Nanabhai Haridas for the appellant:—The defendant obtained the land from Government in 1855-56, and his adverse possession did not commence until then. The decision of the High Court quoted by the lower Court does not apply, as in that case there was a *razinama* given on surrendering the land, which was not done here.

Vishvanath Narayan Mandlik for the respondent.

COUCH, C. J.—It appears from the facts of this case that there was no cause of action until the defendant took possession of the land. The land was lying waste from 1850 to 1855, and the plaintiff could not then have sued any one for it, but he might himself have cultivated it at any time during that period. In the case quoted by the lower Court there was a *razinama* given by the original *miras dar*, the grandfather of the plaintiff, and, therefore, it was held that the right of the plaintiff was affected by the *razinama*, and that the cause of action as regarded the plaintiff accrued on the date of that *razinamah*. In this case nothing occurred till 1855, when the land was taken up by the defendant for cultivation; and, counting the period of limitation from that time, the present claim is not barred. We must, therefore, remand the case to the Appellate Court for re-trial on the merits.

WARDEN, J., concurred.—*Case remanded for trial.* —23rd *March* 1869.—*Idem.*

HER MAJESTY'S PRIVY COUNCIL.

[BENGAL CASES.]

Right to enhance rent—Shikami talukdars—Onus probandi—

Where A, a Zemindar, brought a suit to enhance the rents of certain lands held by B, &c., the defendants pleaded that they were Shikami talukdars; that they and their ancestors had become so before the decennial settlement, and that they held the taluk at a fixed rent—

HELD *that in order to bring a taluk tenure within the meaning of Reg. VIII of* 1793, *it was not necessary that the taluk should have been registered, recorded, or recognized, but that it was sufficient if the tenure existed and was capable of being registered at the date of the decennial settlement; that as against talukdars within the 51st section, it was incumbent on the zemindar to shew the right to enhance rent by special custom, or by contract, or by reason of certain specified conduct on the part of the talukdar; and that as the zemindar failed to shew it, the suit must be dismissed.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Bamasoondery Dossee *v.* Radhika Chowdhrain and others from Bengal, delivered December 13th, 1869.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

The only question upon this appeal is whether the respondent is entitled to enhance the rents of certain lands held by the appellants within the zemindary of which the respondent is the owner of a six-anna share. In the Courts below some questions were raised touching the respondent's title to her share; the sufficiency of the notice, which is the statutory commencement of such a suit; and the justice of the particular assessment, supposing that the rents were liable to enhancement at all; but these are no longer in dispute.

A suit to enhance proceeds on the presumption that a zemindar holding under the perpetual settlement has the right, from time to time, to raise the rents of all the rent-paying lands within his zemindary, according to the pergunnah or current rates, unless either he be precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognized by Regulation VIII of 1793; and it also assumes that the defendant has some valid tenure or right of occupancy in the lands which are the subject of the suit. Before the recent modification of the law (which, as Act X of 1859, had not come into operation when this suit was commenced, does not affect the case), the effect of this presumption in favour of the zemindar was undoubtedly to relieve the plaintiff in a suit for enhancement from much of the burden of proof, which would have lain upon him in an ordinary suit, and to shift it upon the defendant. Regulation VIII of 1793, however, does not apply an uniform rule to all, tenures and rights of occupancy. It may be broadly said that it divides them into two great classes, viz., talooks within the meaning of its 51st section, and ryotty and other under-tenures, for which provision is made by the 49th section. If it be conceded that the law casts upon those who claim the benefit of the latter section the whole burden of proving that their land has been held at a fixed rent for a period commencing at least twelve years before the date of the decennial settlement, it is clear that the 51st section is more favourable to the holders of talooks within its meaning, by imposing upon the zemindar the burden of showing that he is entitled to raise the rent either by special custom or by contract, or by

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reason of certain specified conduct on the part of the talookdar. It follows that in every suit for enhancement of rent the nature of the tenure is a material question irrespectively of the question whether the rent is fixed or variable, since upon the former question depends the extent and nature of the proof which the plaintiff is bound to give.

In the present suit the respondent has come into Court treating the defendants to the suit as ryots, having a right of occupancy in certain lands at a variable rent. The case set up by the appellants was that they were Shikmy Talookdars; that they and their ancestors had become so many years before the decennial settlement; and that they held the talook at a fixed rent. In this state of things it is obvious that the issue settled by the Principal Sudr Ameen, viz., " whether the mehal in dispute is liable to enhancement or not" is not sufficiently pointed, because, in order to determine not only that issue but also the mode of trying it, it is necessary to determine the preliminary question whether the tenure of the appellants was or was not a talook within the meaning of the 51st section of Regulation VIII of 1793.

To the consideration of this question their Lordships will first address themselves, and they will assume that, as the law stood before Act X of 1859 came into operation, the burden of establishing the affirmative of it lay upon the Appellants.

The appellants produced in the Courts below two kabalas and a settlement paper, all dated long before the decennial settlement, in order to prove and explain the creation of their tenure; and a number of dakhilas, or receipts for rent, to show the payment of rent at an uniform and fixed rate. The Courts in India have rejected these documents as spurious, or, at least, untrustworthy; and their Lordships accept that finding, and propose to act upon it by leaving them out of consideration.

The fact, however, remains that the appellants derive title from Roopram and Joykristo Ghose, who are admitted in the replication to have held the lands in question under one Ramchunder Bose, from whom the zemindary passed to Kissen Sing and Gungarain, through whom the respondent derives her title, some time before the decennial settlement. The fact is, therefore, admitted that the tenure of the appellants, whatever it be, existed before, and at the time of, the decennial settlement. The proceedings before the Collector at least prove that as early as 1797 the then holders of that tenure asserted that it was a talook capable of being separated under Regulation VIII of 1793 from the zemindary, and entered in the Collector's books as a talook paying revenue directly to Government.

It appears from these proceedings that the zemindar, although he did not at first appear, ultimately came in and resisted the demand, and that no final decision was come to. It does not appear what were the grounds of his defence, and it is quite consistent with the evidence that he admitted the existence of a talook; but contended either that it was held at a variable rent, or that, by reason of some beneficial interest reserved to the zemindar, it ought not to be separated from the zemindary but to continue a dependent talook. Again, by comparatively modern dakhilas, produced and proved in the cause, it appears not only that rent at the uniform rate of C. R. 168 : 4, being the equivalent of S. R. 158 : 4 : 15½, has been paid and received for this holding from 1245 to 1264 B.S., or from 1838 to 1857; but that in those dakhilas the holding was described as " Talook Roopram Ghose and Joykristo Ghose." The notice which was the commencement of this litigation was served in the year 1264 B.S. The Jumma Wassil Bakee at p. 51 is, so far as it goes, corroborative evidence of the appellants' case, inasmuch as it shows that by a document which from its nature would seem to have proceeded from the cutcherry of the zemindar, and was filed in the Collectorate in the year 1810, the lands in question are described as Talook Roopram and Joykristo Ghose, and as held in 1804 at a rent of S. R. 158 : 4 : 15 : 1. Their Lordships, however, do not lay much stress on this document, inasmuch as the respondent disputes its binding force on her, and the evidence concerning it is scanty and not very satisfactory.

The evidence, however, above stated seems to their Lordships sufficient to establish at least a *primâ facie* case that the holding of Roopram Ghose and Joykristo Ghose, which existed before and at the date of the decennial settlement, was a talook, and is identical with the present holding of the appellants. Such a case called for an answer from the respondent, and no answer in the way of evidence has been given by her to it.

It may be added that the judgment of the High Court seems to treat the tenure as being in terms a talook, and even a talook in existence at the time of the decennial settlement, though afterwards it speaks of it as a talook created at some unknown period, but having a fluctuating rent. The judgment, too, of the Principal Sudr Ameen, which also allows the deduction of ten per cent. for the expenses of collection, seems to treat the tenure as an intermediate tenure, *i. e.*, something higher than a mere ryot's hereditary right of occupancy.

It is said, however, that the tenure, if a talook, is not a talook within the meaning of the 51st section of Regulation VIII of 1793 unless it is shown to have been registered under the 48th section of that statute.

This proposition is undoubtedly supported by the cases decided on the 30th June and 10th August 1847, and reported at pp. 292 and 413 of the Bengal Sudr Dewanny Adawlut

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Reports for that year; by the case decided on the 29th August 1850 and reported at p. 451 of the reports for that year; and by the case decided on the 31st May 1859 and repotted at p. 607 of the reports for that year. But it is not consistent with the case decided on the 30th April 1858 and reported at p. 902 of the volume of reports for 1858, in which two of the Judges, who afterwards decided the case of 1859, extended the benefit of the 51st section to the tenure of a kudeemee ryot,—a tenure which their Lordships apprehend was not subject to be registered under the 48th section, and was certainly not shown to have been so registered in fact. And this doctrine of the necessity of registration has been questioned and overruled by the cases decided in the High Court on the 28th February 1863 and the 23rd January 1867, of which the first is reported at p. 220 of Hayes' Reports of the decisions of the High Court for 1863, and the other is reported at p. 63 of the 7th volume of the "Weekly Reporter."

The effect of the authorities in India seems to their Lordships to be that, although for several years it was held by the late Sudr Dewanny Adalut that in order to bring a talook within the scope of the 51st section it must be shown to have been "registered," "recorded," or "recognized" (for all three terms are used in the cases) at the time of the decennial settlement, that construction is no longer recognized as law by the High Court; and that it is at all events sufficient to show that the tenure existed, and was capable of being registered at the date of the decennial settlement. It follows that their Lordships are not compelled by a long course of uniform decisions to put upon the clause in question a construction narrower than that which, in their judgment, its words warrant. And applying this view of the law to the evidence which, though scanty, is uncontradicted, they must find as a fact that the tenure of the appellant is a dependent talook within the meaning of the 51st section of Regulation VIII of 1793.

Whether such a finding ought not of itself to be an answer to the present suit is a question which is certainly open to argument, for it may well be said that a plaintiff who brings a suit founded on his rights against a ryot in occupation of land ought not to be allowed to convert that suit into one founded on a different right and governed by a different rule. Their Lordships, however, without pressing that point, think it sufficient to say that the effect of such a finding is to cast upon the respondent the burden of showing that the rent is variable, and that, if there is no evidence of that fact in the cause, her suit must fail.

It may be said, however, and that seems to have been the opinion of the High Court, that the evidence given by the appellants itself affords proof that the lands were held at a variable rent. But that opinion seems to their Lordships to be founded on a misconception of the effect of the proceedings before the Collector between 1797 and 1801. The proceeding of the 2nd of September 1800 at p. 49 shows that whatever inaccuracy there may have been in the petition stated at p. 48 (and the document appears on the face of it to be worm-eaten and imperfect) the case really put forward at that date by the appellants' ancestors was that they were the holders of a talook at a rent of S. R. 158: 4: 15: 1. Their Lordships are, therefore, of opinion that upon the evidence in the cause the respondent must be taken to have failed to show that the talook was held at a fluctuating rent; or that she is entitled to enhance the rent, which is proved to have been paid at an uniform rate for so many years.

Their Lordships have further to observe, that if the respondent's case were a true one she would have had little difficulty in proving it. She does not come into Court as the purchaser at a sale for arrears of revenue who rests upon a statutory title with no documents to support it. She derives title from the zemindar with whom the decennial settlement was effected, and she has presumably a right of access to all the records of the zemindary. Her determination in such circumstances to rest upon the supposed defects in the appellants' proof and to abstain from giving evidence of the truth of her own case affords strong grounds for supposing that she had, in fact, no such evidence to give. If such evidence were forthcoming, and she has neglected to give it, she must take the consequences of her own miscarriage.

Their Lordships will humbly advise Her Majesty that the three decrees under appeal ought to be reversed, and that in lieu thereof a decree should be made dismissing the respondent's suit with costs. And the costs of this appeal must follow its result.

Trust for religious purposes — Prior partition deed—

In a suit by the heirs and representatives of 4 *out of* 5 *brothers, who formed at one time an individual Hindu family, to establish a trust of a religious nature said to have been created by a partition deed executed by the then members of the family in* 1838—

HELD *that there was a prior deed of partition executed and repeatedly acted upon, and that no valid trust could therefore be created.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Sreemutty Sokheemonee Dossee and others *v.* Mohendronath Dutt and others from Bengal, delivered 18th December 1869.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

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SIR LAWRENCE PEEL.

This appeal is brought to reverse a decision of the High Court at Calcutta which reversed a decree of the Judge of Beerbhoom in favour of the plaintiffs, the appellants.

The suit was instituted by the plaintiffs, who are the heirs and representatives of four out of five brothers, who formed at one time a Hindu family joint in food, worship, and estate. The defendant Hurreenauth was the son and heir of the remaining brother. Hurreenauth during the progress of this litigation died, and is represented by his eldest son, the first-named respondent, and his younger brothers, who appear by their guardian.

The object of the suit is to establish a trust of a religious nature against the several respondents as affecting the lands in their several occupations. The suit originally included two claims which could not properly be joined, viz., a claim in the character of sebaits to establish the religious trust, and one founded on the ordinary right of co-heirs in ordinary joint property.

On the objection of misjoinder being raised by the answers of the defendants the plaintiffs yielded to it, and their plaint has in that respect been reformed, so that the suit must now be regarded as confined to one in the character of sebaits, to establish their claim to lands alleged to be dewuttur.

A further objection was advanced by the answers that the plaintiffs attributed a partible character to an indivisible property by sueing for four-fifths only. The Judge of Beerbhoom, admitting the correctness of this view of the nature of such property on which the objection was grounded, appears to have considered the plaint as one that might be supported by attributing to the plaintiffs the character of managers. Whether this view of the subject removed the objection may well be doubted, since such a manager has no partible, and, indeed, no estate in the lands; and a trust of this character should follow the general rule, and be asserted and established by a suit so framed as to decide finally and entirely the matter of the claim. Their Lordships, however, regarding the point as one which does not affect the merits of the suit, will proceed to the consideration of the case on the merits.

The plaintiffs state their case thus: By a deed of partition executed by the then members of the family in the year 1245 of the Bengal era answering to the Christian year 1838, the trust was established; the family was then a continuing joint family, and, as such, they dedicated a portion of their joint property to the service of their gods at Brindobun and their family mansion respectively. The alleged foundation, therefore, of the trust was the common consent so to appropriate their common property; and, if this foundation failed, the trust would necessarily fall with it.

The plaintiffs state in their plaint that at an earlier period, viz., the Bengal year 1229 answering to our Christian year 1822, a deed of partition had been executed by the five brothers, who were then all living; but they sought to remove this impediment and *primâ facie* bar to their subsequent endowment by alleging that the partition was not acted on nor designed to be so, being, in truth, a mere device of the family to protect its property from the creditors of one of its members, Gopeenauth, who had become insolvent.

The answers of the defendant Hurreenauth and those claiming under his title, viz., Isserchunder, the defendant Bose, and the Coal Company, on the contrary assert (amongst other matters) the validity of this prior deed, that it was acted upon, that it was repeatedly established by decrees of several courts of justice, that property has been distributed and titles derived and enjoyed under it. And they add that it was publicly registered.

Against the deed of 1838 they allege that it was not registered; that it was not stamped; that it had no original character of publicity; that Gopeenauth, an insolvent, is treated under it as equally entitled with the other sharers; that it makes no allusion to the previous deed; that it secularizes some property already devoted to the gods, and incapable of such change or transfer; that without any assigned reason it constitutes the insolvent the sebait, and sets up a divided and separate administration of trust for one common object; and for these and some other grounds they declare this latter deed to be false and fabricated.

The contest, in the opinion of their Lordships, may be decided by declaring to which of these deeds effect should be given, for clearly they cannot both stand together.

The objections raised by the several answers to the case made by the plaintiffs are compendiously and correctly stated at pp. 53 and 55 of the record in the form of a statement of issues. The first, third, and fourth are those on which their Lordships will proceed to declare their opinion. A decision on these will render it unnecessary to consider the other issues.

The first, second, and third issues are—

Whether the case is affected by the law of limitation?

Whether the partition took effect in 1229 or 1245?

Whether the disputed villages were given in debutter or not?

The first issue was found by the Beerbhoom Court in favour of the plaintiffs, and by the High Court in favour of the respondents, the defendants.

As the plaint was originally framed, this issue was correctly introduced. When the plaint was reformed and limited to a suit in the character of sebaits against trustees, limitation of time afforded no bar; the decisions, therefore,

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of both Courts on this issue are formally defective; but, as in both Courts its decision involved one on the validity of the trust itself, the substantial question was, in truth, considered and decided on the merits.

The third issue involves the second, not necessarily, indeed, but as the facts are pleaded and presented in this case.

The plaintiffs do not say that a partition once took place, but that the family re-united and then made a fresh and operative partition of its then joint property, and dedicated a portion of that joint property by common consent to the service of the gods, constituting the land dewuttur.

The case of re-union and subsequent partition is not made by the pleadings, and is unsupported by the evidence.

The plaintiffs' case assumes, and assumes rightly, that a valid partition acted on would render the second deed inoperative. A Hindu family, consisting of persons in this near connection, may re-unite; part also may re-unite; and such re-united members may impress on their united property by common family consent such trusts as their law will support; but neither of these cases is that before their Lordships.

The burden of proof is on the plaintiffs. The deed of 1229 has the ordinary legal presumption in its favour that it is honest, and is, what it purports to be, a deed of partition. It is also prior in time. It is *primâ facie* a good and operative deed. It cannot be got rid of except by the establishment of a case by the plaintiffs as part of their proof, which involves all the family at that time, including those under whom they derive title, in the perpetration of a gross fraud. The deed of partition is declared by their pleading to have been designed for the express purpose and object of defeating creditors. It is, however, said in the pleadings not to have been acted on. It is not clear in what sense this phrase is used, unless it be that all outward acts of the family in acting upon it disguised an inward design at variance with that which their actions declared. There is the most abundant and, indeed, uncontradicted proof that this deed was by Hurreenauth and his vendees produced, established, and made the subject of various decrees. It is unnecessary to state the instances of this, which were brought to the notice of their Lordships by Sir Roundell Palmer in his exhaustive argument. Mr. Field in reply did not deny that such was the case in numerous instances; but he answered that these acts were all the natural and premeditated results of the original device; that, as it was a deed to defraud creditors, it would, of course, be used as such, and that such proof did not exclude the supposition that it might be considered *inter se* by the members of the family as a mere writing, working no change of property amongst them. Without expressing any opinion upon the question whether a plaintiff supporting his case against those in possession whom he seeks to evict can be admitted to allege the inoperative character of an instrument by which his recovery would otherwise be barred on the ground of a fraud in its concoction, to which all from whom he derives title are parties,—their Lordships, treating the question as one unaffected by such estoppel, and one simply of evidence arising on the facts, have to observe that, as all these public acts would equally attend the enforcement of an honest and valid deed of partition when the estates derived under it are assailed or rights derived under it have to be enforced, they furnish of themselves no evidence of *mala fides*, and should be rather ascribed to the character given to the deed by the defendants than to that imputed to it by the plaintiffs.

Their Lordships, therefore, are of opinion that the issue whether the partition took place under the deed of 1229 or that of 1245 should have been found in favour of the respondents, which finding should, in their Lordships' opinion, have been followed by a corresponding finding on the third, whether the villages were given in debutter or that they were not so given.

Their Lordships desire to add that their conclusion on the effect of the whole evidence as to the subsequent deed does not materially differ from that of the Judges of the High Court, so far as that Court regarded it as insufficient to establish a trust of this character. The altered state of the family property, their increasing expenses and diminishing means, render it improbable that the family really deliberately resolved and effected that resolution to place out of their control, by a legal dedication, so large a proportion of their remaining property. When it is considered that in this case the plaintiffs have advanced, as a part of their case, that a solemn deed registered and purporting to effect a valid partition of their property was designed to have no such effect but was merely a blind for a covert purpose, their Lordships must ask what confidence can a court of justice repose in their statement, that one less solemn and public, and accompanied by many most suspicious circumstances, was designed to be a real and effective instrument of endowment, assented to by the whole family? Whatever may have been the real intention of some of the members of the family amongst themselves, a fact almost impossible to discover amongst the windings of guile and fraud, purchasers, at least, have an undoubted right to bind them, by these their public acts, to the fulfilment of those obligations which such public acts cast upon them. Courts ought not to credit readily assertions of hidden and fraudulent intentions which made to-day for one purpose may be abandoned or denied to-morrow for the assertion of another and inconsistent one.

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Their Lordships do not mean to apply the above observations to any mere benamee transaction or in any way to shake the authority of the numerous decisions which have established, between the apparent and the real though concealed title, that a benamee transaction devoid of fraudulent design may be made the foundation of a decree in a court of justice.

Their Lordships will humbly advise Her Majesty that this appeal be dismissed with costs.

[N. W. PROVINCE CASE.]

Sale of confiscated property—Ratification by Collector—No ground for setting aside—

A certain landed property was confiscated by Government in consequence of the participation by the former proprietors in the rebellion of 1857. *It was subsequently offered for sale in auction to the highest bidder unconditionally, and the respondent was the purchaser for* 19,000 *rupees. Before the sale was confirmed by the Collector, another person intervened and offered to take it for* 22,000 *rupees, and the property was accordingly made over to him. In a suit for possession by the former purchaser, the appellant contended that the ratification of the Collector was one of the conditions of the sale.*

HELD *(affirming the judgment of the Courts below) that the ratification of the sale by the Collector was not one of the conditions of sale in the circumstances of the case; that, even assuming that such a condition attached to the sale, the appellant was bound to show that the refusal by the Collector was for non-observance of some of the express conditions of the sale; that, as the subsequent purchaser was one who purchased with notice of previous sale, the same equity attached against him as against Government; that the suit could not be defended on the ground of an act of State, because it did not relate to the functions of Government; and that in a sale, the Government was exactly in the situation of an individual selling his property, and, when the property was knocked down, the relation of vendor and vendee existed between the Government and the highest bidder.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Sheo Lall Bohra *v.* Sheikh Mahomed from the High Court of Judicature, North-Western Provinces, Agra, delivered December 9th, 1869.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

This being a case in which no one has appeared on the part of the respondents, their Lordships have felt it to be their duty most anxiously to consider it, in order to see whether any sufficient grounds existed for the reversal of the judgment. They are unable to come to any other conclusion than that the judgment must be affirmed.

This was a suit for possession by establishment and declaration of right of 1,662 acres in the mehal of Thannah Bhowan, which was property confiscated by the Government in consequence of the participation by the former proprietors in the rebellion of 1857.

It was suggested to the Government that this property might be put up for sale; and Mr. Colvin, who recommended this, proposed, in order to prevent the possibility of any of the rebels or of any of their relatives becoming purchasers, that it should be put up in one entire lot. This suggestion was adopted by the Collector of Moozuffernugger, who, in a letter to the Commissioner of the Meerut Division, said, "Mr. Colvin's note so fully details how "imperfect partition has been made, that "nothing is left for me to explain. All the "confiscated patches have been accurately "defined and formed into one puttee. It has "not been thought necessary to make a regular "butwara or perfect partition, although that "could be done if necessary; for all practical "purposes the separation of the scattered "confiscated parcels is complete, and the whole "can now be put up for sale with the prospect "of some wealthy outsider buying it in. Had "the confiscated patches not been divided off "and then sold, the probability is the relatives "of the rebels would have purchased the lots. "Even now there is a fear of the relations "buying in the property 'ism furzee.' This "will be guarded against as far as I am able."

These extracts from the correspondence are for the purpose of showing that the attention of the Government was at the earliest period called to the propriety or expediency of preventing rebels becoming the purchasers of this property. But the Government did not adopt that view; and, in a letter from the Secretary of the Sudr Board of Revenue to the Secretary of the Government, of the 12th January 1864, the Secretary of the Sudr Board says, "The Board in recommending the "proposal for sale remark that, as the puttee "is intermixed and some of the rights (as in "wells) joint, and the responsibility common "with the other puttees, it will be inexpedient "to place any restriction on the competition "of the resident brotherhood, even though "connected with the ex-proprietors. A stranger "may find it difficult to gain effective possession, and besides the Government need not "lose the chance of a higher price from unrestricted competition."

A sale to this effect was sanctioned by the Lieutenant-Governor. The Under-Secretary to the Government, writing to the Secretary of the Sudr Board on the 16th February 1864,

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says, "The Lieutenant-Governor has been "pleased to sanction the sale of the confiscated "lands . . . as therein detailed."

This was followed by an order of the Revenue Court, dated the 14th March 1864, which directs "that the auction be knocked down to "whoever bids the highest, no attention being "paid as to whether he be a rebel or not;" and then a notice was issued, following upon that order, in these terms:—"Whereas, in accordance "with the sanction of the Commissioner, No. 74, "dated 12th March 1864, conveying the sanction "of the Government, the auction-sale of the pro-"perty situated in the town of Thannah Bho-"wan, in Pergunnah Thannah Bhowan, confis-"cated by Government for rebellion, and as "detailed at foot, will be held on the 20th "April 1864, it is hereby notified that who-"soever may wish to purchase should present "himself at Moozuffernugger and do so. More-"over, that the auction-purchaser will have to "abide by the conditions of the auction, and "that the auction-sale will be knocked down "to whichever party gives the most. No "attention will be paid as to whether the "purchaser is a rebel. Whoever chooses may "purchase."

Of course, that was notice to all the world that anybody, whatever he might be, whether rebel or not, going into that auction-room might become a bidder for, and the purchaser of, this confiscated property. Accordingly, an agent of the respondent appeared in the auction-room and bid for him, and, after considerable competition, was ultimately decided to be the highest bidder, and the lot was knocked down to him upon his bidding of 19,000 rupees.

He then sought to have that sale perfected. He deposited the sum of 2,060 rupees, and desired to complete the purchase, when he was met by an objection that the sale not having been ratified by the Collector another person had come forward who had offered a larger sum, 22,000 rupees, and, therefore, that the sale to the respondent would not be carried out.

The right to refuse to complete the sale is founded on a memorandum at the foot of the statement of the biddings in these terms:—"This auction has been knocked down to Moul-"vie Sheikh Mahomed, the son of Moulvie "Ahmed Oollah, resident of Thannah Bhowan, "through Katim Ally, on the 20th April 1864, "on the condition of its being ratified by the "Collector."

The principal question in this case is whether the ratification of the sale by the Collector was, or could be made, a condition of the sale. It is unfortunate in this case that we have no evidence at all of what the conditions of sale were; but, according to the opinion of the Judge of the District Court and also of the High Court, this, which is sought to be imposed as a condition, was no part of the original conditions of sale.

The Judge of the District Court said, "The "notice declares that the property shall be sold "to the highest bidder, subject to the condi-"tions of sale. What those conditions were "does not exactly appear, but no proof is "adduced that the confirmation of the sale by "higher authority was one of them." And the High Court was of opinion that, "inasmuch as "the Collector, with the sanction of the supe-"rior authorities, made it a distinct condition "of the sale that the property should be sold to "the highest bidder, and that the considera-"tion as to whether he was a rebel or not "should not affect his right to purchase, the "Government were not at liberty, subsequently "to the sale, to disapprove of and annul the "sale on the grounds stated; that the "Government, like any other seller, might "impose whatever conditions it pleased in refer-"ence to property which it offered for sale "*prior* to the sale; but when it had expressly "stated that it would not allow a particular "objection to operate, it was not at liberty "*subsequently* to the sale to impose a condition "on the sale not only *novel*, but *directly* at "*variance* with the terms under which it offered "the property for sale."

Their Lordships apprehend that, looking at the terms of the memorandum, the words "on the condition of its being ratified by the Collector" must be qualified in this manner,—that, supposing the conditions of the sale have not been complied with, then the Collector might refuse to ratify it; but to hold it to have been in the power of the Collector to refuse to ratify the sale because the purchaser was a rebel would be a determination utterly repugnant to the terms and conditions upon which according to the public notice, the sale was to be conducted.

Even assuming, therefore, that the appellant is right with regard to the ratification of the Collector being a condition which attaches upon the sale, he was bound to show that the refusal to ratify the contract was by reason of the non-observance or the non-performance of some express condition of sale.

Under these circumstances the suit is brought virtually for specific performance. In consequence of the contract in the auction-room, an equity arose against the Government, which the party seeks by this suit to enforce.

Now, inasmuch as Sheo Lall pretends or assumes to be the purchaser of this property, it was impossible that such a suit could be instituted without making him a party to it, and he might have shown that he was a purchaser for valuable consideration without notice, and, if that had been the case, he would have been dismissed from the suit. But it appears clearly that he had notice of this purchase by the respondent, because, in a petition which he presented to have his offer accepted and the property conveyed to him,

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he said, "Whereas the auction-sale of the town "of Thannah Bhowan, the property of rebels, "and confiscated by Government, was yesterday "sold for Rupees 19,000, and that as yet the sale "has not been ratified and that the property "will admit of a higher price, I, prior to the "ratification of the former auction, present "this application to the extent of Rupees 22,200, "and solicit that, if the authorities deem it "advisable, the property be bestowed on me "for that sum." He is, therefore, a purchaser with notice, and the same equity attaches against him as against the Government.

It has been said that this suit could not be instituted by the respondent, inasmuch as what was done was an act of State, which could not be called in question. The meaning, as their Lordships understand it, of an act of State is something which appertains to the functions of Government. Suppose, for instance, any question had arisen with regard to the propriety of confiscating the rebels' property, that would have been an act of State. Probably the determination of the Government to sell that confiscated property might also be treated as an act of State, but in the sale the Government was exactly in the situation of an individual selling his property by auction; and, when the property was knocked down, the relation of vendor and vendee existed between the Government and the highest bidder.

It is impossible, therefore, to say that this suit was not properly brought against the Government. It is to be regretted that the Government should have brought itself into the position of having sold to a person who it appears is likely to create some dissatisfaction and provoke hostile feelings in the district.

The Government no doubt acted from the best motives and according to the best judgment they could form as to the most advantageous mode of selling the confiscated property, and their Lordships can only hope that they will be able to protect the subjects in the district from the danger to which they seem to be exposed from the character of the person whom they have permitted to become a purchaser.

Under these circumstances their Lordships can do nothing more than affirm the decree and dismiss the appeal.

OFFICIAL PAPERS.

Enhancement of Salt Duty.

Proceedings of the Madras Government, Revenue Department, 6th February 1868.

Read the following letter from the Secretary to the Board of Revenue, to the Secretary to Government, Revenue Department, Fort St. George, dated Madras, 5th December 1867, No. 7,857:—

I am directed by the Board of Revenue to acknowledge the receipt of the Order of Government, under date 9th September 1867, No. 2,113, communicating to the Board for report a circular from the Secretary to the Government of India, in the Financial Department, dated 27th June 1867, No. 977, requesting that the Government of Madras will take into consideration the existing rate of Salt duty in the Madras territories with reference to the question of raising it to the level of the duty in Bengal or to a more limited extent, and desiring that, in deciding upon the question, the condition of the people, especially of the lower classes and the comparative wages of labour, be duly considered.

2. The salt monopoly was established in the Madras Presidency in 1805, and the price of salt was then fixed at 9 annas and 4 pies per Indian maund of 82⅔ lbs. (or ·17 of a penny per lb.). In 1809 the rate was raised to 14 annas per Indian maund (or ·25 of a penny per lb.), and the sales for home, inland, and foreign consumption immediately fell from lbs. 306,231,223 to lbs. 235,244,983; and though in 1810-11 the sales had reached lbs. 273,172,111, they never again touched lbs. 306,000,000 until 1820-21, when the sale-price was again reduced to 9 annas and 4 pies per Indian maund, and lbs. 396,398,263 were sold. In 1825-26 the sales were upwards of lbs. 419,000,000; but on the price being raised to 14 annas per Indian maund in 1828, the sales again decreased, falling as low as lbs. 293,201,115 in 1832-33, and rarely being in excess of lbs. 350,000,000 up to 1844, when the price was raised to Rupee 1 and Annas 8 per Indian maund. This latter rate was put in force under the orders of the Government of India, when the inland transit duties were abolished, but was strongly protested against by the Madras Government, who were of opinion that "a sudden rise in the monopoly price to the "extent of 10 annas per Indian maund would "have most serious influence on the home and "inland trade, and would be an inducement to the "inhabitants to procure salt illicitly, or to use the "unwholesome earth-salt, which is easily procurable in every district."

3. On receipt of this protest the late Honourable Court of Directors overruled the order of the Supreme Government, and reduced the price at which salt was to be sold from Rupee 1 and Annas 8 per Indian maund to 1 rupee, pointing out that, whenever the price had been raised in former years, a considerable falling off in the consumption had invariably followed, and that the decrease in sales must have been occasioned "either by "the mass of the people restricting their consumption within the narrowest possible limits, or, "what is more probable, by the poorer classes "having recourse for this necessary of life to "illicit sources, or to the manufacture of an unwholesome and inferior salt which may easily "be prepared from the saline earth common in "the country."

4. The increase of price from 14 annas to 1 rupee per Indian maund (or from ·25 of a penny per lb. to ·29 of a penny per lb.) does not seem to have had any marked effect on the consumption, for it steadily increased each year up to 1850-51,

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when it nearly reached lbs. 419,000,000, at which it had stood twenty-five years previously.

5. After a consideration of these statistics the Board can come to no other conclusion than that the old rates of duty on salt had a very serious effect in restricting the consumption of the article, for it is impossible to suppose that from natural causes the consumption of the people should be the same in 1825 and 1850, when the large increase of population which had taken place in the interval is taken into account.

6. The statistics of the last fifteen years are, however, much more re-assuring. The gross quantity of salt sold during the five years between 1851-52 and 1855-56 was on the average upwards of 485 millions of pounds, and the average sales between the latter year and 1860-61 were nearly 540 millions of pounds. In the year 1859 the price of salt was again raised to Rupees 1-2-0 per maund, (·33 of a penny per lb.,) and in 1861 to Rupees 1-6-0 (·40 of a penny per lb.) and Rupee 1-8-0 (·44 of a penny per lb.,) and again, recently in 1866, to Rupees 1-11-0 (·49 of a penny per lb). The gross quantity of the article sold in each year is noted below, from which it would appear that the large increase of taxation which has taken place has not materially affected the consumption, though the sudden increase of price in 1861 had the effect of reducing the sales of the year 1861-62 by upwards of 20 millions of pounds below the average sales of the previous five years:—

Average gross annual sales from	lbs.
1851-52 to 1855-56	485,766,308
Do. from 1856-57 to 1860-61	539,948,818
1861-62	519,416,887
1862-63	544,643,383
1863-64	564,350,811
1864-65	596,795,985
1865-66	664,788,598
1866-67	613,722,733

The reduction was but temporary, however, as the sales of 1862-63 were nearly 5 million pounds in excess of the average sales of the five years ending in 1860-61. Since the latter year there has been a steady increase in the quantity sold each year up to 1864-65, and the increase in 1865-66 was unusually large owing to the quantity exported by sea (on which no duty is paid) having risen from a little over 41 million pounds in 1864-65 to upwards of $112\frac{1}{2}$ million pounds in 1865-66. The falling off in the quantity sold in the past official year 1866-67 was not occasioned by the increase in the price, but was chiefly owing to the export sales having fallen again to 31 million pounds.

7. The average consumption of the population may be approximately arrived at by taking into account only the home and inland sales of salt and excluding the foreign sales, the sales to the French Government, and the sales for exportation over sea. According to this calculation, the consumption of the people was $13\frac{1}{2}$ lbs. per head in 1850-51, whereas the average consumption during the five following years at the same rate of population was $15\frac{1}{3}$ lbs. per head. In 1856-57 the population was found to have increased by nearly a million, and the consumption of that year (on the new rate of population) was only 13 lbs. per head. The average annual consumption of the five years ending in 1860-61 on this rate of population was, however, $15\frac{3}{4}$ lbs. per head. By the census of 1861-62 the population was found to have again increased by nearly 2 millions, and the consumption in that year, calculated on the new rate of population, was $16\frac{1}{5}$ lbs. per head. In 1862-63 on the same population it was 16 $\frac{1}{12}$ lbs., and in 1863-64 lbs. $17\frac{1}{21}$. In 1864-65 it was lbs. $118\frac{1}{24}$; in 1865-66, lbs. 19; and in 1866-67 lbs. 19. The census, was taken in May last, and the returns are not yet complete; but supposing the rate of increase to have been the same during the past five years as it was on previous occasions, the population must now be about 26 millions, which would reduce the rate of consumption in 1866-67 to lbs. 18 per head. This rate, however, is a very large increase over the rates of previous years, and is little below the rates of consumption in countries where the article is untaxed, the consumption of salt in England being estimated at 22 lbs. per head, and in France at $19\frac{1}{2}$ lbs. per head.

8. The explanation of this apparent anomaly is that the so-called home and inland sales do not in reality represent the consumption of the home and inland districts of the Presidency, for a very large proportion of the salt finds its way to the Central Provinces and to the territories of Mysore and Hyderabad. By the recent census of the former provinces the population was upwards of 9 millions, and the population of Mysore is certainly upwards of 5 millions, while that of the Hyderabad territories must be nearly double that number, and it may thus perhaps be fairly estimated that about 10 millions of persons resident without the limits of the Madras Presidency obtain their salt supply from the Madras Salt Depôts. Should this estimate be correct, the total consumption of the year 1866-67, being nearly 576 million pounds, would be divided among 36 millions of people, 26 millions of whom are resident within the Madras Presidency, which would give a consumption of 16 lbs. per head. Another mode of estimating the proportion of the salt which is only nominally sold for consumption within the Presidency is to deduct from the "sales for other districts" such quantity as is exported over the frontier; this is well known to be the case in regard to the whole salt sold for other districts, in Ganjam, Vizagapatam, Godavery, Kistna, Nellore, South Canara, and Malabar, and at least one-third of the salt sold for "other districts" at the Madras Salt Depôts is exported to Bangalore and Mysore. On this calculation it will be observed that, of the nominal quantity sold for consumption within the Presidency, 191,160,246 lbs. are exported, leaving only 384,503,205 lbs. for the consumption of the 26 millions of inhabitants, or an annual consumption of only 14 lbs. per head.

	lbs.
Ganjam	66,642,213
Vizagapatam	90,926
Godavery	154,121
Kistna	38,748,260
Nellore	30,676,032
South Canara...	12,970,450
Malabar	7,797,805
Madras	34,080,439
Total...	191,160,246

9. Any calculation of this description, however, whether based on an estimate of the population of the foreign districts supplied or upon the probable quantity of salt nominally sold for inland districts which is exported beyond the frontier, cannot be

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considered very reliable; but supposing that 18 lbs. per head is the lowest rate of consumption which would show that the rates of duty on salt did not act as a prohibition on its consumption, it may be safely asserted that that rate has not yet been generally reached throughout the Madras Presidency, and that, therefore, any proposal to increase the present rate of duty must be approached with great caution, lest it should result in a largely-decreased consumption and lead to a reduced revenue. Abundant evidence has been shown by the fluctuation in the salt sales which took place in the first half of the century that any increase of price had a direct and serious effect on consumption, and though the improved condition of the people owing to reduced assessments, combined with increased prices, has enabled them to bear the recent augmentation of tax without any sensible diminution of consumption, still it is by no means certain that these augmentations have not been the means of *preventing an increase of consumption.* We find that in 1850-51 the consumption, according to the home and inland sales, was 13 lbs. per head, and in 1856-57 was still at the same rate; but between that year and 1860-61 it rose to 15¼ lbs. per head, or increased by seventeen-and-a-half per cent. This was doubtless owing to the improved condition of the people, owing to the liberal policy which was inaugurated in 1853 in regard to the land assessment, and to the rise which had already taken place in the prices of all agricultural produce. As this policy has been steadily continued, and as prices are now double what they were ten years ago, it might be fairly inferred that, had no cause operated to impede the consumption of the full quantity of salt required by the population, the rate of consumption during the six years ending with 1866-67 would have risen by twenty-one per cent., and the rate should now be 18 lbs. per head instead of 14 lbs., or, at the outside, 16 lbs.

10. The condition of the people generally has no doubt greatly improved of late years. No better evidence can be adduced of this than the enormously increased burden of taxation which they now bear. In this improvement the labouring classes have participated, though probably not to the same extent as the other classes of the population. Agricultural labourers are, as a rule, paid in grain, and such wages have not materially increased of late years. Money wages have risen from 50 to 100 per cent., but they are the exception and prevail chiefly in the seaports and places where Europeans reside or transact business. Against the rise in the value of labour must be set off the enormous increase in the price of every commodity, whether a necessary of life or a luxury.

NOTE.—In 1855-56 the gross revenues from land, &c., were £4,683,480, while in 1865-66 they were £6,331,712.

11. On the whole, the Board are of opinion that, while the condition of the poorer classes has improved and is improving year by year, it would be very impolitic and hazardous to increase taxes which, like the Salt-tax, fall with peculiar severity, relatively, on them. As already observed, up to 1859-60 the price of salt was Rupee 1 per Indian maund; in that year it was raised to Rupees 1-2-0; in 1861 it was increased first to Rupees 1-6-0 and then to Rupees 1-8-0; and in 1866 it was raised to Rupees 1-11-0. Thus within the last ten years the price of salt has been raised sixty per cent., and the salt revenue, which in 1855-56 was Rupees 54,14,000, was Rupees 101,27,000 in 1865-66. It thus appears that taxation has kept pace with the increased prosperity of the people.

12. The Board do not hesitate to say that any attempt to assimilate the rate in Madras to that in Bengal would be ruinous, and would be most unjust, as ignoring the vastly heavier incidence of the land-tax in this Presidency. Salt also is an absolute necessary of life, and humanity dictates the imposition of the lowest tax on it, which the necessities of the State will permit. The present rate of duty is from *twelve to fourteen hundred per cent.* on the cost of production, and, though it may be true that the duty represents the value of only a few days' labour in the year, it must be remembered that the cost of the article is enormously enhanced to the consumer by the expense of carriage from the coast, where alone it is procurable. The railways now open only affect a few districts and elsewhere, though the communications are being improved as fast as the limited means of Government permit, their condition over a large portion of the country is still a reproach to our administration.

13. The consumption of salt during the last sixty years has only about doubled, but in that interval the number of consumers from the ordinary increase of the population and the opening of fresh markets for the article has undoubtedly hardly done less. In the interval, however, the salt revenue has increased nearly six-fold. These figures seem to the Board conclusive as to the impolicy of raising the Salt-tax; they show, in fact, that it is now on the verge of the limit repressive of consumption. The effect which the Bengal rate of duty, if imposed here, would have, has been practically demonstrated in Ganjam. The late Collector of that district in his letter, dated 13th April 1866, No. 443, which was submitted to Government with the Board's Proceedings dated 26th June 1866, No. 4,347, showed that in the year 1863-64, when an enhancement of the duty had led to a decrease of lbs. 4,772,000 in the Cuttack salt sales, the quantity sold in Ganjam for the provinces where this reduction of consumption had occurred was augmented in that and the following year by lbs. 9,182,674, so that the population affected by these transactions consumed far more largely than before, and a clear gain of Rupees 44,400 accrued to the General Revenue. It should be borne in mind, in noting these remarkable results, that the decisive effect of an enhancement of price in these quarters of the empire is attributable to the enormous cost at which salt is carried from the coast to the Central Provinces, which leaves so narrow a margin for profit that even a slight increase of price becomes a matter of importance. A cart-road from the Ganjam pans has been completed to the limits of the district on the borders of Boad, and in the direct line from Sumbulpore, but no steps have been taken, the Board believe, to continue it beyond the limits of this Presidency.

14. In conclusion, I am to observe that it appears to the Board to be very questionable whether the Madras Presidency can fairly be looked to for an augmentation of the Imperial finances. The Board believe that the people of this Presidency are now more highly taxed than those of other parts of India. The Board have not before

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them the Imperial statistics of recent years, but they find that in 1859-60 the area of the presidencies and provinces under British administration was about a million square miles and the population about 140 millions, and in the same year the gross revenues derived from land, salt, and abkarry were respectively about 19 millions, 3 millions, and 1½ millions sterling. Thus throughout India each square mile paid, on the average, £19 as land revenue, and the taxation of the whole population was about 2*s.* 3*d.* per head for land revenue, 5*d.* per head for salt, and about 2¼*d.* per head for abkarry. In the same year the Madras Presidency was about 130,000 square miles in extent, the land revenue and the abkarry and salt taxes (for consumption within the presidency) produced respectively about 4 millions sterling, £300,000, and £500,000. The population was about 23 millions. Thus for each square mile of area about £31 was paid as land revenue on the average, and the population paid about 3*s.* 6*d.* per head as land revenue, 3¼*d.* as abkarry tax, and 5¼*d.* per head as salt tax. It will thus be seen that in 1859-60 the people of Madras were more highly taxed than those of many other administrations, and since that date the public burdens have been very seriously augmented in this presidency by the various enactments authorizing local taxation for certain local charges. The Board hope, therefore, that before proposing any exceptional alteration in the present taxation of the Madras Presidency for the benefit of the Imperial finances, it will be clearly ascertained that no other administration is so well able to make a special contribution for this purpose. The Board trust, however, that the recent determination* to reimpose the income tax will render it altogether unnecessary to interfere with the existing rate of taxation upon salt in Madras.

* See Memorandum by Mr. Massey, attached to the letter from the Secretary to the Government of India to this Government, dated 19th September 1867, No. 2,823.

Order thereon, 6th February 1868, No. 337.

The Government concur in the opinion expressed by the Board that any increase in the Government-selling price for salt is to be deprecated even in the interests of the State finances. They observe that, in addition to the arguments stated by the Board, a very strong one may be deduced from the extent of the sea-board of this Presidency, and the immense facilities thereby afforded for illicit manufacture, which can only be effectually checked, except at a most disproportionate expenditure of money, by keeping the Government monopoly price at a moderate level, and so reducing the margin for illicit gains below what will cover the risk involved.

2. The letter from the Government of India will be answered in accordance with the above views.

(True Extract.)
(Signed) W. HUDLESTON,
Secretary to Government.

REVENUE DEPARTMENT,
FORT SAINT GEORGE,
6th February 1868.

No. 338.

No. 122.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
Financial Department.

SIR,—I am directed to reply to your circular letter, dated 27th June 1867, No. 977, referring for consideration the question whether it is advisable to raise the Government price of salt in Madras to the level of the duty in Bengal, and requesting that the grounds for any adverse opinion may be fully stated.

2. In the comparative statement of existing rates of duty, given in paragraph 4 of your letter, that prevailing in Madras is entered as Rupees 1-8-0 per Indian maund, and the same for Bombay.

3. The Government-selling price for salt in this Presidency is Rupees 1-11-0 per Indian maund, to which it was raised from Rupees 1-8-0 by Act XIX of 1866, the object, it is inferred, being to make the "*duty*" the same as in Bombay under the excise system of taxing private manufacture, the cost price of the salt manufactured *here* for Government being between 2 and 3 annas a maund including all charges, so that

Selling price.		Cost price.		Duty.
Rupees 1-11-0	*minus*	Rupees 0-3-0	=	Rupees 1-8-0.

4. The question now raised was referred for the opinion of the Board of Revenue, whose reply is forwarded for the information of His Excellency the Governor-General in Council.

5. The Board come to a decided conclusion as to the impolicy of raising the duty, arguing that the facts adduced show that it is already on the verge of the limit which is *repressive of consumption.*

6. They show that in 1859-60, which is the latest year for which they have the necessary statistics, the rate of the salt tax per head of population was in this Presidency 5¼*d.*, while it was only 5*d.* on the average of all India.

7. They also show from recorded facts that in past years any increase of price had a direct and serious effect on consumption, and that, although both consumption and revenue have advanced notwithstanding an increase in the duty, it is more than doubtful whether *the rate of advance* has not been checked by the higher selling price.

8. In 1850-51, the sales for "home and inland" consumption were at the rate of 13 lbs. per head of the population. In 1856-57 it was at the same rate, the price in both years being Rupee 1 per maund. By 1860-61 it had risen to 15¾ lbs. per head notwithstanding that the price had been increased to Rupees 1-2-0.

9. But in 1861 the price was raised first to Rupees 1-6-0 and then to Rupees 1-8-0, and, in 1866, as above stated, to Rupees 1-11-0, and the result is that in 1866-67 the "home and inland" sales had fallen to the rate of only 14 lbs. per head of population, notwithstanding that circumstances generally were in favour of a continued advance from the extension of railways, improvement of roads, and high prices obtained for produce. The latest comparative statements of

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revenue show that there is a considerable falling off* in the salt revenue of the current fusly, as compared with the preceding one down to the same date.

* Rupees 3,70,430 to 31st December 1867.

10. These are very significant facts, and the Board adduce the evidence obtained from the increased sales and revenue in Ganjam when the duty was raised in Cuttack and the demand was consequently transferred to the cheaper market, as proving that the public finances actually benefitted by the cheap salt superseding the dearer article.

11. There is an additional argument against increase of duty in this Presidency derived from its extensive sea-board, and the enormous facilities thereby afforded for illicit manufacture, to which the Board do not allude.

12. This Presidency has at least 1,000 miles of coast, embracing numerous localities offering every possible facility for making salt surreptitiously in small quantities by solar evaporation, without the possibility of Government preventing it except at an immensely disproportionate cost in money, (to say nothing of the demoralization of the people by organized smuggling,) unless the Government remove the inducement by making the illicit gain inadequate to cover the risk. They can only do this by keeping their own selling price moderate.

13. I am directed to state that this Government entirely concur in the view expressed by the Board of Revenue. They are not prepared to say that a small increase in price would at once reduce consumption, or might not benefit the revenues immediately in some measure; but they are satisfied that the *rate of progress* now existing would be still more injuriously affected than it has already been, and that the ultimate effect would be disadvantageous to the finances of the country. In fact, they deem it well deserving of consideration whether a *reduction* in the Bengal rate would not probably be a far more beneficial measure for the Imperial finances than an increase in the Madras rate, to say nothing of the vast difference in the effect that would be produced on the people.

14. Salt is a necessary of life everywhere, but it is far more essentially so in a country where the bulk of the people live mainly on a vegetable diet, and yet it appears that at present in Madras, notwithstanding its lower rate of duty than Bengal, the quantity consumed per head of population is only about two-thirds of the average consumption in England.

15. This Government entertain a very strong feeling as to the political morality of taxing such an easily and widely produced necessary of life as salt. They consider that the measure can only be justified by proving that the benefits secured to the tax-payers by the revenue derived from the tax far more than counterbalance the burden imposed on the community, and from this point of view the first consideration should be whether a reduction in the higher rates of duty would not tend to increase consumption to an extent that would sensibly promote the health and comfort of the people without seriously reducing the revenue and embarrassing the finances.

16. But even if doubt be entertained whether, under the Bengal system, the community generally or only the importers would benefit by a reduction of duty, there can be no doubt that under the monopoly system in force in this Presidency any increase in the Government-selling price immediately produces and affords a *primâfacie* reasonable ground for a far larger increase in the retail price by the wholesale purchasers from Government, thus tending to check consumption; and even in the interests of the finances only, this Government have no hesitation in deprecating the suggested measure.

I have the honour to be,
Sir,
Your most obedient servant,
(Signed) W. HUDLESTON,
Secretary to Government.

Memorandum by the Acting Revenue Secretary on the proposed increase of the Salt Duty.

In reply to the query of Government whether the duty on salt might not be slightly enhanced without diminishing consumption or interfering with the natural increase of consumption, the Board of Revenue adhere to their former opinion that, though the recent increases of the salt duty had not sensibly diminished the consumption of salt, they had possibly prevented an increase of consumption; that the present salt tax is on the verge of the limit repressive of consumption; and that, therefore, it is hazardous and impolitic to raise the duty.

2. The Board submit the opinion of several Collectors of districts on the subject, the great majority of whom are of a different opinion from the Board, thinking that an increase of the price from Rupees 1-11-0 per maund to Rupees 2 per maund would not in any way affect consumption, and would not limit the natural increase of consumption incident to an increase of population. Mr. Minchin and other officers point to improved communication having already, *in fact*, reduced the price of salt to the great bulk of consumers, and express their opinion that the annual advance which is made in this direction in all parts of the country will insure no loss to the general body of consumers by a small increase of price.

3. At the same time it must be borne in mind that the home consumption of salt in the Madras Presidency is not as high as it ought to be, and there is very little doubt that in all coast districts where smuggling is easy and difficult of detection, a large quantity of smuggled salt is annually consumed. An increase in the duty will render this practice still more general in these localities, and, were the question a local one only, it would be very questionable policy to increase the rate of salt duty. Indeed, in the present state of consumption, it is doubtful whether a reduction in the duty would not, as in other countries, lead to a largely increased consumption and an increased revenue. This has been the invariable effect, it is believed, of every reduction of taxation on necessaries in Great Britain. Between 1840 and 1844, when the sugar duty was 25*s*. per cwt., the average consumption was 16 lbs. 5 oz. per head and the average revenue under 5 millions; whereas between 1855 and 1859, when the duty was 14*s*. per cwt., the average consumption was 31 lbs. per head and the average revenue was nearly 8 millions. Similar results followed the reduction of taxation on tea and coffee. Between 1850 and 1854, when the duty on tea was 2*s*. per lb., the average consumption was 2 lbs.

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per head and the average revenue 5½ millions. In 1860 and 1864 the consumption was raised to 3 lbs. per head and the revenue to 6 millions, the duty having been reduced to 1*s*. per lb.

4. Looking at the question as an Imperial one, however, and bearing in mind the evils which must result from the oppressive duties on salt in the northern parts of India, an increase of the Madras price to 2 rupees per maund may well be sanctioned if it will *insure* the reduction of the duty in Northern India to that amount. An increase of the rate in Madras will doubtless give an increase of revenue, and will partially make up for any possible loss in the north; but, once the duty has been assimilated all over India, the consumption of each province should be watched with the greatest care and tentative reductions of duty might be tried, which would involve but little loss if unsuccessful until that rate is arrived at which pays best with the maximum of consumption.

5. From a local point of view the arguments brought forward by the Board against any increase in the taxation of the Presidency are of much weight, for undoubtedly the burden of taxation is heavier in Madras than in other parts of India. The Board showed in their former letter that the land revenue throughout India was 2*s*. 3*d*. per head and £19 per square mile, whereas in Madras it was 3*s*. 6*d*. per head and £31 per square mile. Abkarry and salt throughout the empire were 2½*d*. and 5½*d*. per head, whereas they were 3¼*d*. and 5½*d*. in Madras.

(Signed) R. A. DALYELL,
Acting Secretary to Government.

12*th May* 1869.

MINUTE BY THE HONOURABLE H. D. PHILLIPS.

If we accept the views of the greater number of Collectors who have been consulted since the date of receipt of the confidential communication of the Duke of Argyll to Lord Napier, there would seem to be no probable danger to the salt revenue from a slight increase of duty on that article. But some of the most intelligent and reliable of these functionaries hold a different opinion, and are averse to any addition to the tax at present levied on it. The three Members of the Revenue Board, as shown in their separate Minutes, agree with the four Collectors who form the minority of the Collectors whose opinions are before us. The official report from the Board of Revenue, based on the Members' Minutes is, therefore, now, as it was before in their elaborate report, recorded in our Proceedings, dated 6th February of last year, decidedly against another increase of duty, which they regard as an undesirable and an imprudent step. I may note that the Third Member of the Board of the present time was not in the Board in February 1858, so that we have four of the senior and most experienced Revenue Officers of the service averse to a measure which would again raise the tax on salt. In submitting to the Government of India the Board's report to which I refer, this Government expressed their entire concurrence in the views which it expressed, and seem to have considered the Board's reasoning so full and convincing that little or nothing was added o it. So far as I am personally concerned, I still regard the Board's exposition of the subject as correct; nothing has occurred intermediately to alter the ground on which it was based, and I, therefore, think this Government should adhere to the concurrence with the Board which they expressed in the early part of the past year.

2. There appear to me to have been a sufficient number of increases in the tax on salt, and I would, therefore, now leave at rest for a period what seems an assured source of gradually increasing revenue.

		RS.	A.	P.
Its monopoly price from 1844-45 to 1858-59 was per Indian maund	...	1	0	0
In August 1859 it was raised to ...	...	1	2	0
In April 1861 do. ...	...	1	6	0
In June 1861 do. ...	...	1	8	0
In March 1866 do. ...	...	1	11	0

That is to say, in nine years the price has been raised 70 per cent. It may fairly enough be held that in the past fifteen years the country has made great progress, and that generally the condition and circumstances of the lower classes have improved; but we know that the actual rate of consumption of salt in the entire Presidency is still not more than 14 or 15 lbs. per head of the population, or several pounds below what the rate ought to be, if not depressed and checked by the imposition of the existing tax of Rupees 1-11-0. Any fresh addition will, I apprehend, still further impede consumption, and cannot fail to throw back what even now, under existing impediments, is a magnificent item of revenue. We ought, I consider, to be very cautious in dealing with changes when we find that in fifteen years, from Fusly 1263, when high prices and the change in the circumstances of the country commenced, the salt revenue has risen from 36 to upwards of 100 lacs of rupees. Will it not be better, instead of running the risk of killing the goose that lays the golden egg, to rest satisfied with the probable increase which, in the natural course of things, must result from the gradual further improvement in the resources of the country?

(Signed) H. D. PHILLIPS.

17*th May* 1869.

MINUTE BY HIS EXCELLENCY THE PRESIDENT.

It may fairly be affirmed that this Presidency gives more and receives less than any other part of India. The land assessment is much heavier than it is in Bengal, Bombay, and other portions of the country. The cesses for local purposes are equal to any, and higher than most. On the other hand, the grants from the Imperial Exchequer are less liberal than they are in other provinces where the backward condition of society or the prosecution of works of general importance justify an exceptional generosity on the part of the State. As a partial compensation to the people of Madras for the disadvantages imposed on them, the monopoly price of salt, though raised nearly 75 per cent. during the last decade, is still maintained at a moderate amount if compared with the excessive charges in Central India, the North-West Provinces, and Bengal.

2. Under these circumstances, if the present proposal to raise the monopoly price of salt was merely prompted by the desire to exact an augmentation of Imperial revenue, I would deprecate it as unjust to the people of Madras, who bear

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already at least a fair proportion of the public burdens.

3. The measure now suggested has, however, a very different character. It is a proposal to assimilate the price of salt all over the British territories with a view—(1), to the relief of the great majority of the general population who are now affected by the higher price of this necessary of life; (2), to the abrogation of the preventive lines which now intersect the country, the maintenance of which is expensive, vexatious, and prejudicial to the general freedom of traffic. The Government of this Presidency is not asked to make a sacrifice for a revenue interest merely; it is asked to make a sacrifice for the welfare of the greater number of Her Majesty's subjects and for the general good of trade.

4. The reduction of the duty on salt in the provinces subject to the higher rates cannot be effected without a temporary sacrifice of revenue, and the Supreme Government are not prepared to incur a sacrifice of revenue. The deficit contingent on the reduction of the salt duty must be covered, or, at least, reduced. This result can be attained by the imposition of a new tax or the increase of an old one affecting the whole country only the increase of the duty on salt, or the price of salt, in the provinces subject to the lower rates. In my humble judgment, a temporary increase in the price of salt would in this Presidency be less felt and less resented than the introduction or aggravation of any other impost.

5. Should the Government of Madras be disposed to adopt the opinion here submitted, it is obvious that the step taken ought to be bold, in order that it may be transitory. By coming frankly to the assistance of the Supreme Government and the general revenue, the reduction of price in the provinces affected by the higher duty can be made prompt, decided, and universal. In this way the reaction would be immediate and satisfactory. A rapid expansion of consumption would occur over the immense area to which relief would be afforded; an increasing revenue would empower the Supreme Government to retrace its steps and to sanction, even on financial grounds, a general diminution of duty which would bring back the price of salt over the whole of India to the level at which it now stands in this Presidency. The question for solution is how far can we go without materially restricting consumption and giving a dangerous impetus to illicit fabrication.

6. The balance of opinion in the papers now before us countenances the impression that an increase of 5 annas per maund, which would raise the price from Rupees 1-11-0 to Rupees 2, would not seriously affect the purchase-power of the consumers, who, under such a system, if compelled to restrict their expenditure, would limit their outlay on other commodities rather than restrict it with reference to salt. I do not think that this result can be predicted with any absolute security. The last increase of price in 1866 was followed by a diminution of consumption, though not by a decrease of revenue. The diminution of consumption may be accounted for by the excessive dryness of the recent seasons and the consequent impoverishment of the population. We are not secured against the recurrence of similar calamities. It appears probable to me that, with a good rainfall and a full crop, the people could maintain their present rate of consumption in the face of an increased price. They could not do it with a dearth. There is undoubtedly a risk, but it is a risk we may incur for the object which the Secretary of State has set before us.

7. Taking, then, a sanguine view of the subject, assuming that the present rate of consumption can be maintained in prosperous seasons and that the seasons will be prosperous, to what amount of revenue would a price of Rupees 2 per maund enable us to throw into the Imperial Exchequer for the purpose of mitigating the temporary deficit which would certainly be caused by a reduction of the duty in the north? The average revenue derived from the sale of salt in this Presidency during the years 1866-67, 1867-68, and 1868-69 has been Rupees 1,11,52,550; the selling price being Rupees 1-11-0 per maund. If the quantity sold should remain the same and the selling price be raised to Rupees 2, the amount of revenue obtained would be Rupees 1,32,17,837, an advance of upwards of 20 lacs. That is the most we can promise to the Supreme Government. An advance beyond Rupees 2 per maund would certainly result in a diminution of consumption.

8. The salt revenue of Bombay is about one-half of the salt revenue of Madras. I am not enabled to state whether an increase of duty would necessarily imply a diminution of consumption; but assuming that it would not, and that the increase of duty imposed in that Presidency was commensurate with the increase of the monopoly selling price here, an advance of revenue of about 10 lacs might be realized.

9. Such an increase of the price of salt in the provinces subject to the lower rates as might be supported without a diminution of consumption would, according to the preceding argument, place the sum of 30 lacs in the hands of the Supreme Government to meet the apprehended loss of revenue in the less favoured provinces in which the salt revenue may be estimated at upwards of 400 lacs. The compensation afforded by Madras and Bombay would, of course, be swelled by the amount of revenue derived from the increased quantity sold in the less favoured provinces under a lower rate of duty—an amount which I am not enabled to estimate, but which would no doubt be considerable even at the outset.

10. It is for the Secretary of State and the Supreme Government to judge whether, with such a perspective of support, they can enter upon the contemplated measure of general assimilation. As far as we are concerned, I would advise that a letter be addressed to the Secretary of State to the effect that this Government are disposed to raise the monopoly price of salt to Rupees 2 per maund on the distinct understanding—(1), that a similar sacrifice is imposed upon all the provinces affected by the lower duty; and (2), that the change is adopted in connection with an assimilation of the price of the commodity all over the British territories, for under such a measure such an increase of consumption may be eventually expected as will enable the Supreme Government at no distant date to revert with advantage to the revenue to the lower price now existing in the favoured provinces.

(Signed) **NAPIER.**

MADRAS, *May* 28*th*, 1869.

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MINUTE BY THE HONOURABLE A. J. ARBUTHNOT.

We are called upon to determine whether it is possible, consistently with the interests of the Imperial revenue and with a due regard to the requirements of the poorest classes of the community, to raise the price at which, under the Government monopoly, salt is sold in this Presidency, and which at present stands at Rupees 1-11-0 per Indian maund; and, if so, to what extent the price may safely be increased.

2. The object with which it is proposed that the price of salt in this Presidency and in Bombay shall if possible be raised is, that the Supreme Government may be enabled, without incurring any considerable sacrifice of revenue, to reduce the high price charged for this necessary of life in the northern provinces of India.

3. In the papers before us there is considerable difference of opinion as to the advisability of any increase to the present price. The Members of the Board of Revenue are all opposed to it; one of them, however, (Mr. W. Robinson,) basing his opposition not on the ground that a moderate addition to the present price would diminish consumption, or seriously hinder its gradual and natural increase, but on the ground that the people of this Presidency are more heavily* taxed in proportion to the population than those of any other Indian Province, and that any increase to that taxation would be unfair. Of the Collectors who have been consulted, the majority see no objection to increasing the monopoly price up to 2 rupees a maund, and this opinion is shared by a Madras Firm, Messrs. Cammiade, Martin and Co, who deal largely in salt, and who are directly interested in preventing any such enhancement of the monopoly price as would tend to reduce consumption and consequently to reduce the profits which they derive from the trade in salt. These gentlemen assert that, "if an increase in the revenue becomes indispensable for the better management of the government of the country, the rate of excise duty† fixed on salt may be raised to Rupees 2 or Rupees 2-4-0 per Indian maund without incurring the risk of reducing consumption." Such an opinion, emanating from traders practically interested in developing the consumption of the article, affords strong support to the views of those officers who are favourable to an enhancement of the present monopoly price. Short of actual experiment there could hardly be a better test of the propriety of the measure than the favourable opinion of persons so obviously interested in maintaining and increasing the consumption.

* NOTE.—The validity of this reasoning appears to me to be very questionable, inasmuch as a very large proportion of the only class of persons upon whom the salt tax can be at all burdensome are those who do not contribute in any other shape to the taxation of the country.
A. J. A.

† NOTE.—They doubtless mean the monopoly price. The excise system has not as yet been introduced into this Presidency.
A. J. A.

4. At the same time it must be admitted that any mere estimate or opinion is liable to prove erroneous, and that some of the most experienced and some of the ablest officers in the Revenue service agree in considering that the salt tax is now on the verge of the limit repressive of consumption, and that it would be hazardous and impolitic to raise it.

5. Questions, moreover, which lie at the root of he whole matter, and the settlement of which is to enable us to arrive at any really satisfactory conclusions as to the possibility of raising the tax without unduly restricting consumption, are still involved in uncertainty. It is not by any means a settled point what ought to be the consumption of salt per head by the people of this country, nor are there data for arriving at anything approaching to an accurate estimate of the actual consumption per head in this Presidency.

6. The first question is gone into at some length in Mr. Plowden's Salt Report. At the time that report was written the Madras Board of Revenue estimated 18 lbs. per head per annum as the average quantity that would be consumed if price were not a hindrance; but this Mr. Plowden considered* to be "much beyond a necessary quantity for a full-grown man." "6 seers or 12 lbs. a head," he observes, "has usually been considered a full "allowance. Sir Thomas Munro's highest esti- "mate, it has been seen, gives less than 9 lbs., and "in the Bombay jails 7 lbs. is found to be a suffi- "cient allowance."

* See report, paragraph 697.

7. Mr. Walter Elliot, the Commissioner of the Northern Circars, who made careful inquiries on the subject, came to the conclusion that 7 seers or 14 lbs. was a fair allowance. On the other hand, Mr. Davis, a former Collector of South Arcot, who is said to have given a good deal of attention to the question, estimated the minimum quantity for an adult at 25 lbs. per annum. And more recently, Dr. Cornish, in his Memorandum on the nature of the food of the inhabitants of Southern India and on Prison Dietaries, "estimates the quantity of salt required at from three-fourths of an ounce to 1 ounce per head per diem, or from 17 to nearly 23 lbs. per annum." Dr. Cornish says that "it has been shown by physiological experimenters "that at least half an ounce of salt passes away "in the urine every day, and nearly the same quan- "tity by the skin and the fæces; and that to reple- "nish this constant and daily waste, and to supply "the body with an ingredient so essential to it, the "least quantity which should be provided is from "three-fourths of an ounce to 1 ounce." At the present time 1 ounce of salt forms a part of the daily diet of each prisoner in every jail in this Presidency; but I am aware* that the Inspector-General of Jails considers the above allowance excessive.

* NOTE.—Since the above was written I have been informed by the Superintendent of the Central Jail at Coimbatore that on the average about one-eighth of the daily allowance of salt is returned into store in that jail.
A. J. A.

8. The other question of what is the actual consumption of illicit salt per head per annum is equally involved in doubt. It cannot be said that as yet we have an accurate census of the population, nor are there any trustworthy data for arriving at an estimate of the proportion of the total quan-

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tity of salt sold, which is consumed within the limits of the Presidency. The Board of Revenue give a rough estimate in their letter of the 5th December 1867, but admit that it is not very reliable.

9. It follows that the only data upon which any reliance can be placed are the gross sales of salt for home and inland consumption, and from the annexed abstract of the returns for the last ten years it is evident that the additions which have been made to the monopoly price during that period have not been followed by any considerable, certainly not by any permanent, diminution of consumption :—

ABSTRACT of Salt Sales for *Home* and *Inland* consumption for the last ten Fuslies.

Fuslies.	Years.	Sales.
1269	1859-60	475,711,076
1270	1860-61	506,149,384
1271	1861-62	484,440,686
1272	1862-63	511,611,676
1273	1863-64	526,156,087
1274	1864-65	550,371,044
1275	1865-66	549,169,426
1276	1866-67	575,663,451
1277	1867-68	528,921,818
1278	1868-69	556,413,782

NOTE.—Fusly 1269 corresponds with the yea ending on the 30th June 1860.

In April 1861 the price was raised from Rupees 1-2-0 to Rupees 1-6-0, and again in June of the same year to Rupees 1-8-0 per Indian maund. In the following year (Fusly 1271, corresponding with the year ending on the 30th June 1862) the consumption fell from 506,149,384 lbs. to 484,440,686 lbs., but in the next year it rose to 511,611,676. In March 1866 the price was raised to Rupees 1-11-0, the present monopoly price, and, notwithstanding this increase of price, the consumption of the following year (Fusly 1276, corresponding with the year ending on the 30th June 1867) was higher than that of any year of the period, amounting to 575,663,451 lbs. In the next year (Fusly 1277) the consumption fell to 528,921,818 lbs., owing doubtless to the badness of the season, which necessitated the construction of famine works and the opening of relief houses in several districts, and caused a severe pressure on the poorest classes. Last year, however, the consumption had again risen to 556,413,782 lbs. These facts, taken in connection with the annually increasing facilities for the carriage of salt inland, afford, I think, fair grounds for assuming that a moderate percentage may be added to the selling price without hindering the natural increase of consumption.

10. The course which on full consideration I would advocate is that we should propose to the Government of India to raise the monopoly price at once to Rupees 1-14-0 a maund, at the same time intimating that, in the event of this increase not being attended with a falling off in the consumption, we shall be prepared at the close of the ensuing Official year to recommend a further increase of 2 annas a maund with a view to the equalization of the tax throughout India.

11. I consider this tentative measure to be preferable, under all the circumstances of the case, to an immediate increase of 5 annas a maund, involving an additional percentage of 18½ to the present monopoly price.

(Signed) A. J. ARBUTHNOT.

2nd September 1869.

REVENUE DEPARTMENT,
FORT SAINT GEORGE,
17th September 1869.
No. 2,592.

No. 264.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
Home Department.

SIR,—I am directed to report, for the information of His Excellency the Viceroy and Governor-General in Council, that His Grace the Secretary of State for India furnished the Right Honourable the Governor of Madras with a copy of his despatch to the Government of India, under date 21st January 1869, No. 2, relative to a reduction of the duty on salt in Upper India concurrently with an increase of the rate now paid in the Presidencies of Madras and Bombay.

2. Lord Napier communicated the despatch to this Government, and I am directed to submit the correspondence which has passed on the subject with the Board of Revenue and certain of the District Officers, together with the Minutes of the several Members of Government. You will observe that this Government, with a view to the exceptionally high assessment on land in this Presidency and the interest of a numerous class of small holders, numbering with their families perhaps five millions of souls, would deprecate a permanent increase on the price of salt as a simple expedient for raising a higher revenue. If, however, a general measure for the equalization of the price of salt throughout India and for a uniformity of system is under contemplation—a measure which would probably result in such an augmentation of consumption in the highly taxed provinces, as to afford the prospect of a general reduction of price at no distant date—this Government would not feel justified in withholding their co-operation.

3. They would be prepared to recommend that the price of salt in this Presidency should be increased by 3 annas per Indian maund at first, and, if this expedient is not attended with a serious diminution of consumption, which they do not anticipate, they would subsequently add 2 annas more, making the Government price of salt Rupees 2 per maund, the rate to which it is presumed the price would be reduced in the highly taxed provinces.

4. Considering the deficiency of the Imperial revenue already reported and the further loss which may be anticipated in the present year in consequence of the distress prevailing in many parts of the empire, this Government would, moreover, be willing to anticipate the preparation of a general measure for the reform of the salt system, and to raise the price of salt in this Presidency at once from Rupees 1-11-0 to Rupees

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1-14-0, a measure which, unless the consumption should diminish, would place about twelve lacs of rupees per annum, of which six will be available in the present financial year at the disposal of the Imperial Government.

5. This Government believe that this experiment may now be made with every prospect of success in consequence of the prosperous season with which the South of India is favoured; and they consider it their duty to make some sacrifice to the general good, when it can probably be done without inflicting a decided local hardship. They would, therefore, suggest than an Act be immediately passed raising the price of salt to Rupees 1-14-0 per maund, and that intimation of the same be given to this Government by telegraph in order to prevent speculative purchases while the measure is under contemplation.

6. This Government are happy to be able to add that the general prospects of the revenue are favourable, and that it is not improbable that an aggregate increase of nine lacs may be realized, which, in conjunctien with six lacs from salt, would make a gross increase of fifteen lacs above the estimated revenue of the year for the Madras Presidency.

I have the honour to be,
Sir,
Your most obedient servant,
(Signed) R. A. DALYELL,
Acting Secretary to Government.

Order, 18th September 1869, No, 2,608-A.

Resolved that the following telegram be despatched to the Financial Secretary to the Government of India, Simla:—

" Viceroy's telegram of sixteenth received. Madras Government cannot approve greater increase of Salt duty than 5 annas per maund, thus raising the price to 2 rupees. More would diminish consumption, perhaps even revenue."

(True Extract.)
(Signed) R. A. DALYELL,
Acting Secretary to Government.

REPORT OF THE SELECT COMMITTEE ON THE COURT FEES' BILL.

We, the undersigned, the Members of the Select Committee of the Council of the Governor-General of India for the purpose of making Laws and Regulations to which the Bill to provide for the better regulation of Court fees was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Junior Secretary to Chief Commissioner, Oudh, No. 47, dated 7th January 1869, and enclosures.

From Secretary to Government, Financial Department, No. 3,958, dated 7th October 1869.

From Secretary to Government, Punjab, to Secretary, Foreign Department, No. [illegible], dated 25th August 1869, with enclosures, and Resolution, Foreign Department, No. 409, dated 14th October [illegible].

From Chief Secretary to Government, Madras, No. 4,677, dated 29th October 1869, and enclosure.

From Honourable Mr. Justice Turner, High Court, North-Western Provinces, dated 22nd October 1869.

From Secretary to Government, Bengal, No. 6,329, dated 3rd December 1869, and enclosures.

From Secretary to Chief Commissioner, Central Provinces, No. 3[illegible], dated 4th December 1869.

From Chief Secretary to Government, Madras, No. 1,909, dated 2nd December 1869, and enclosure.

From Secretary to Government, Punjab, No. 1,714, dated 6th December 1869, and enclosures.

From Secretary to Government, Bengal, No. 6,507, dated 14th December 1869, and enclosures.

Memorial from the British Indian Association, dated 16th December 1869.

From Registrar, High Court, No. 434, dated 16th December 1869, and enclosure.

From Officiating Registrar, High Court, North-Western Provinces, No. 1,989, dated 16th December 1869, and enclosure.

From Secretary to Government, Bombay, No. 4,499, dated 18th December 1869, and enclosure.

From Chief Secretary to Government, Madras, No. 1,978, dated 14th December 1869, and enclosures.

From Secretary to Government, Public Works Department, Madras, No. 4,007, dated 22nd December 1869.

From Chief Engineer, Irrigation Works, and Joint Secretary to Government, Punjab, Public Works Department, No. 4,4451, dated 18th December 1869.

From Secretary to Government, North-Western Provinces, No. 166A, dated 30th December 1869.

Telegram from Chief Secretary to Government, Bombay No. 5,753, dated 25th December 1869.

From Officiating Secretary to Chief Commissioner, Oudh, No. 5,881, dated 30th December 1869.

From Honourable Mr. Justice

The principal amendments which we have made in the Bill are as follows:—

Acting on a suggestion from the High Court of the North - Western Provinces, we have provided (Section 7) separate rules for the valuation of suits relating to interests in land, but which do not seek its actual possession.

We have also expressly provided in Section 7, and in Schedule II, No. 15, for the following suits:—To enforce the right to share in property on the ground that it is joint-family property: to obtain a declaratory decree or order: to obtain an injunction: for rights to easements and for accounts: to enforce rights of pre-emption: to alter and set aside summary decisions and orders of the Civil Courts (not established by Letters Patent) & Revenue Courts; and for specific performance of contracts.

We have empowered (Section 13) the Courts in their discretion to refund fees paid on applications for review

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Turner, High Court, North-Western Provinces, dated 29th November 1869.

Memorandum by Honourable Gordon S. Forbes, dated 4th January 1870.

From Chief Secretary to Government, Madras, No. 270, dated 17th December 1868, and enclosure.

From Joint Secretary to Government, North-Western Provinces, Public Works Department, No. 17C, dated 6th January 1870.

From Chief Secretary to Government, Fort Saint George, No. 1,993, dated 16th December 1869, and enclosures.

From Secretary to Chief Commissioner, Oudh, No. 3,133, dated 8th January 1870.

From Joint Secretary to Government of Bengal, Public Works Department, No. 21, dated 5th January 1870.

Telegram from Acting Chief Secretary to Government, Bombay, No. 142, dated 8th January 1870.

From Acting Chief Secretary to Government, Bombay, No. 147, dated 8th January 1870, and enclosure.

From Under-Secretary to Government of Bombay, Irrigation Branch, No. $\frac{16A}{49M}$, dated 10th January 1870.

Petition from Advocates, High Court, Bombay, no date.

of judgment, when the application is not made within ninety days from the date of the decree.

In modification of the present law, we have declared (Section 11) that the Court's decision on questions of valuing a suit shall be conclusive as between the parties. But we have at the same time protected the revenue by authorizing the Appellate Court, in cases where it considers that such questions have been wrongly decided, to require the appellant to pay such additional fee as would have been payable had the question been rightly decided.

In lieu of the fixed fees on the service of processes contemplated by the Bill as introduced, we have empowered (Section 19) the High Courts to make rules as to the costs of such service. We have also provided (Sections 21 and 22) for fixing the number of peons to be employed in the Mofussil Civil, Criminal, and Revenue Courts; and we propose to repeal expressly the existing law on the subject. The practice varies so greatly in different parts of the country that further consideration seems required before introducing a system of uniform charges for the service of process. The provisions on the subject which we have made are modelled on those now in force throughout the Bengal Presidency.

We have retained the fee of eight annas with which the Bill, as introduced, charges certain complaints to Criminal Courts. But we propose (Section 30) to direct the Court, on convicting the accused, to order him to re-pay to the complainant not only the fee in question but also the fees (if any) to be paid by the latter for serving processes in the case.

In deference to the representations that have been made as to the maximum fee chargeable on plaints and memoranda of appeal, we have reduced it from Rupees 5,000 to Rupees 3,000.

To discourage frivolous applications for reviews of judgment, we have imposed (Schedule I., No. 3) on such applications a fee of one-eighth of the fee paid on the institution of the suit or presentation of the appeal. In proper cases, the Courts will be empowered to refund so much of the fee so charged as exceeds the fixed fee now payable.

The distinction between the *ad valorem* duties chargeable under the English Stamp Acts and under the Bill, as introduced, on probates and on letters of administration, does not appear to us to rest on any reasonable ground. We have, therefore, (Schedule I, No 9,) substituted a common *ad valorem* fee of two per cent. on the amount of the property in respect of which probate of administration is granted.

In order to bring within the compass of a single enactment the whole law relating to Court fees, we have repealed and re-enacted all the provisions on this subject contained in the Code of Civil Procedure, Act X of 1859, the Oudh Rent Act, the Punjab Tenancy Act, the Bengal Act VIII of 1869, and certain Regulations of the Madras Code, and we have expressly repealed the provisions so re-enacted.

The Bill as introduced purported to repeal the whole of Act XXVI of 1867. We have saved so much of it as exempts Advocates of a High Court from filing Wakálatnámas. The matter appears one to be dealt with in a measure relating to procedure rather than in a Bill relating to Court fees.

The above are the chief amendments which we have made. We shall now specify our minor alterations.

We have authorized (Section 5) the Chief Justice of a High Court to delegate his power of deciding questions as to the amount of a fee.

In Section 7, Clause 5, we have placed suits for the definite share of an estate on the same footing as suits for land forming an entire estate, and provided that inam lands shall be valued in the same way as lands paying no revenue. We have also inserted a definition of the word "estate" as used in this clause.

We think it inexpedient that enquiries into nett profits or market value should, as a matter of course, take place for the purposes of the proposed Act. We have, therefore, (Section 8,) left the making of such enquiries wholly within the discretion of the Court.

Where it appears that the value has been wrongly estimated, we propose (Section 9) that the Court shall dismiss the suit, unless the additional fee be paid within a time to be fixed by the Court. Where the amount of mesne profits is left to be ascertained in executing the decree, if the profits so ascertained exceed the profits claimed, we have provided (Section 10) that further execution shall be strayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained shall be paid, and that, if such additional fee

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is not paid within the time fixed by the Court, the suit will be dismissed.

Where a suit is multifarious, we have provided (Section 16) for charging the aggregate amount of the fees to which plaints embracing each of the separate subjects would be liable.

We have inserted in the exemption clause (Section 18) probates and letters of administration when the amount of the property does not exceed Rupees 1,000, complaints by public servants, and applications relating to supply for irrigation of water belonging to Government, for leave to extend cultivation or to relinquish land, and for compensation.

We have provided (Section 32) for the admission in criminal cases of instruments for which the proper fee has not been paid.

We have exempted (Section 35) from the operation of the proposed Act the commission payable to the Accountant-General of the High Court at Fort William.

In Schedule I we have made provision for certificates under Act No. XX of 1864 and Bombay Regulation VIII of 1827.

In Schedule II we have subjected to a fixed fee suits for possession under Act XVI of 1838 and Bombay Act V of 1864. We have provided a fee of four rupees for caveats, and we have prescribed a fixed fee of ten rupees on applications and agreements under Sections 326 and 328 of the Code of Civil Procedure. We have reduced from thirty-two to five rupees the fee on petitions in suits under the Pársi Marriage Act.

We have inserted (as Section 17) Section 7 of Act XXVI of 1867, and have provided for summary suits for possession under the Limitation Act, and miscellaneous applications to a High Court.

We have fixed the 1st of March as the day on which the proposed Act shall come into force.

We have made some verbal alterations, and recommend that the Bill thus amended be passed. But we think it expedient that the Bill should first be re-published in the *Gazette* along with this report.

(Signed)	F. R. Cockerall.
(,,)	J. Strachey.
(,,)	J. F. Stephen.
(,,)	Gordon S. Forbes.
(,,)	D. Cowie.
(,,)	F. S. Chapman.
(,,)	J. R. Bullen Smith.

11*th January* 1870.

Re-published by order of His Excellency the Governor in Council.

(Signed) J. I. MINCHIN,
Acting. Chief Secretary.

CIRCULAR ORDERS OF THE BOARD OF REVENUE.

No. III.

Standing No. 150-1.

Puttahs for dry land to contain clause of liability to be changed to wet.

Collectors when issuing puttahs for newly-granted dry lands should see that a clause is inserted in the puttah to the effect that the land is liable to be transferred to the head of "Wet" and assessed accordingly should the requisite means of irrigation be provided.

No. IV.

Standing No. 295-1.

Results of appeals where Government concerned to be on Stamp paper.

When reporting to the Board results of suits against, or appeals on behalf of, Government, (should such result be adverse to Government), Collectors will be careful *at the same time* to forward copies on stamped paper of the decrees and judgments in the Original and Appellate Courts, in order that no time may be lost should an appeal to a higher Court be decided on.

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THE

MADRAS REVENUE REGISTER.

No. 4.] MADRAS:—FRIDAY, APRIL 15, 1870. [VOL. IV.

REVISION OF ASSESSMENT.

WE have had before us a voluminous file of very important papers on the subject of revising the assessment of the Salem District, the principles of which, however, are apparently to be made applicable, local peculiarities and other circumstances permitting, to all the other districts of the Presidency. We should have been glad to have published these papers as they were sent to us, but our limited space has compelled us to make a selection limited to the formal Proceedings of Government and Despatches to the Home Secretary, omitting with regret the long and very able minutes of His Excellency the Governor and his honorable colleagues in Council. There used to be a time in this Presidency when the land tax and the mode of levying it was most oppressive and inquisitorial, and when our Revenue officers, following in the wake of the Mahomedan conquerors, rack-rented the ryots and imposed additional burdens on the smallest pretence, which had the effect of throwing the best lands out of cultivation, and thereby crippling the land revenue of the country. The classification of soils ran up to an incredible number, the assessment rising in the same way like the scales of the gamut, until it reached a point at which it was impossible to cultivate with the hope of paying the Government revenue, much less of profit to the husbandman. Then, if a ryot with a few rupees to start with sunk a well, or raised a second crop, down came the revenue inquisitor upon him, to inspect his proceedings and to demand an additional cess which he named *teerwa jasti* or *fysal jasti*, as the case might be. The consequence was that the best lands were thrown up, and all encouragement to private enterprize calculated to improve the land was entirely repressed. Our administrators soon saw the evil of this state of things, and began to minute and to write proceedings; but it takes a long time to uproot old customs and change the *mamool* of the land; so that it was not until the days of Lord Harris that any steps were actually taken to lower the assessments and give the great body of our ryots a real interest in the land. Sanction was obtained from the Honorable the Court of Directors, a Survey and Settlement Department organized to measure and class the lands, and the principle announced that henceforward the land would be taxed at its then capability, leaving all the profits of improvement to the husbandman who effected it. All re-actions run to extremes. Thus the effect of this principle was that the Government demand would be stagnant, whereas the profits of the landholder would be as expansive as rise in prices, over which he had no control, could make it. The

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land was to be permanently *dry* assessed, no matter what the character of the cultivation raised, no matter how rich the crop produced. If the husbandman supplied his own irrigation, then he payed nothing but his dry assessment: if, however, he drew water from a Government source, he paid so much for the use of the water, such charge being calculated to yield a percentage on the outlay expended by the State in constructing and maintaining the work of irrigation. The progress of events has shewn that, however generous this was to the landholder, it was not just to the State on whom the demands for improved administration, education, and other advantages in keeping with the times, have increased to such an extent as to make our former revenues unequal to the strain of present days. The principle of giving every man the full advantage of his own labour and expenditure lowered assessments on all sides, while demands upon the State kept on increasing. Public establishments began to be crippled, reduced, and impaired, while the abominable income tax and taxation on justice were resorted to, to prop up a failing exchequer. As part of the system of reducing expenditure, the Survey and Settlement Department was shorn of its proportions and kept in a state of lethargic overseeing, while the actual work of introducing revised assessments was entrusted to the District Collectors themselves. Another re-action, however, has now taken place, brought about by the discussion of revised assessments for the district of Salem. Our present administrators are not the men who can shut their eyes to the passing events and present wants of the day. They cannot see why revenue should be sacrificed for a sentiment; and, taking right energetic action in the matter, they have proselytized the Home Government to such an extent that, abandoning the principle of permanent assessments on a *"full, fair, and equable"* basis *once for all*, so pretentiously set out in a Despatch of Sir Charles Wood in 1862, they have run further than their advisers, and wish to take every advantage of improvements in land, brought about by whatever cause. But it is time that we should notice the discussion that has so deeply interested us, and which is fraught with so much importance for the land in which our lot in life is cast.

The papers before us open with a deeply interesting report of the Board of Revenue in October 1867 on the Settlement operations in the district of Salem, which, they say, were commenced by Mr. Puckle and Mr. E. C. G. Thomas in August 1859, and were expected to be completed in the course of 1867. The district of Salem comprises nine taluks, and is divided into three naturally well-marked tracts called respectively the *Talaghat*, or southern division; the *Baramahal*, or intermediate tracts; and the *Balaghat*, or most elevated range. The effect of the survey was to shew an excess in Government land alone of 1,50,434 acres of land, or about 14 per cent over the reputed area, exclusive of inam and porumboke. The classified area of the whole district is 15,08,642 acres, consisting chiefly of red soil, and producing the staple grains of paddy, cholum, cumboo, raggy, and horse-gram. Messrs. Puckle and Thomas based their calculations on the price lists obtaining in the different fairs and markets for the long period between Fusly 1231 and Fusly 1274, or A. D. 1831 and 1864; and, making deductions from these prices for cost of carrying to market and merchants' profit, they reduced the old commutation rates from about 13 annas and more to 10 annas per Harris cullum in the southern, and 9 annas in the northern divisions, for all grains. They made a further deduction of 10 per

cent for unprofitable areas, and declared that the result thus arrived at by them represented the Government share as nearly as possible at a moiety of the net produce. The effect of their proposals was a diminution in the land revenue of the district of 4,11,799 rupees, or 24 per cent; but against this was to be set off a gain of 45,450 rupees for second crop irrigation and 8,925 rupees for village service cess at 6¼ per cent, exclusive of road cess. In the opinion of the Revenue Board, these proposals represented a fair and moderate demand, comparing it with its incidence on cultivation and waste and with the rates prevailing in other districts, while it was consistent with the intentions of Government and the Secretary of State. Mr. Puckle was, however, for postponing the proposed settlement—and Mr. Master, the Director of Revenue Settlement, agreed with him—because they thought the existing settlement a good one which the people, with the present prices, were quite able to pay. The Board of Revenue could not think with these officers. In their opinion, postponement would simply be to waste time, money, and labour expended in the settlement operations. Every new settlement involved loss of revenue. In Trichinopoly there was a loss of 25 per cent; and in the Manargoody and Chellumbrum Taluks of South Arcot, there was a loss of 18 per cent. They called to mind the fact that when it was proposed in 1855 to revise the assessment of the whole Presidency, a large sacrifice of revenue was expected; and contended that the determination of the share of the State in the produce of the land was not to be influenced by any consideration of gain or loss of revenue, but by the conviction of its necessity, in order to stimulate extension and improvement of cultivation, to admit of accumulation of capital in the hands of ryots, to create a class of landlords between Government and the actual cultivators, and to give stability to the land revenue and contentment to the people. There is certainly much to be admired in these generous sentiments of the Revenue Board; but considering the wants of the day, these sentiments make for the welfare and comfort of one class of people, while they would leave other classes of the community to the mercy of financial legislators at Calcutta, who pertinaciously shut their eyes to the far different circumstances prevailing in Madras and Bombay, and make these Presidencies pay for the shortcomings of Bengal. Be this as it may; on the views of the Board of Revenue being propounded, there followed a series of minutes from the pen of Lord Napier and his colleagues, for and against revision; those of his lordship and the Hon'ble A. J. Arbuthnot being marked by great ability and thorough mastery of the subject. The general effect of the views of Sir Thomas Pycroft, who was then in Council, and of the Hon'ble H. D. Phillips, was to let well alone. The object of the revision, they held, was to give the ryot a fair share of the produce; if the old assessment did not give them this when it was introduced, times had changed; prices had doubled and trebled owing to depreciation in the currency in consequence of the gold discoveries in Australia, America, and elsewhere, and were not likely to go down. Lord Napier and Mr. Arbuthnot were agreed that the re-assessment of Salem should not be postponed; for not only was it impolitic to abandon the results of so much labour and enquiry, but it was manifest that, notwithstanding the evident prosperity of the district as a whole, there were inequalities that had still to be revised. Both were thoroughly agreed also that it would not be politic, considering the requirements of the day, to abandon more than two lacs of revenue. We are indebted to his lordship

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for an able analysis of Mr. Arbuthnot's views; and if we follow his lordship, we shall at once obtain a clear insight into the respective speculations of these two master minds. Setting out with the starting point that no revenue was to be sacrificed, his lordship was nevertheless of opinion that there should be a new settlement based on the classification proposed by the Settlement officers; the loss contemplated by their plan being recovered by contracting the number of years on which the commutation was to be based, so as to strike off a number of the earlier cheaper years. His lordship thus summarizes Mr. Arbuthnot's suggestions. *First*, to definitively fix the term of years on which the average of prices is to be calculated for commuting the produce rent of Government land into money rent; *secondly*, to fix this same term for all districts, allowances being made for particular localities; *thirdly*, to fix the duration of the new settlement; and *fourthly*, to charge the Settlement Department with the duty of introducing the new settlement. As to the first of the suggestions, and with reference to the Settlement officers having gone back 40 years for their calculations, embracing a period when the country had not realized the benefits of durable peace, and had not enjoyed the advantage of the opening of foreign markets to its productions, Lord Napier would go as far as Mr. Arbuthnot in including a longer retrospect of cheaper years than that advocated by some —say, by taking 20, instead of the last 12 years, which many who knew the Presidency were confident would form a correc basis of commutation; his lordship being guided in his choice by the consideration that Government should be mindful of the rights, the vested interests, the habits, and apprehensions of the cultivators, and the probable development of other sources of revenue. As to the second suggestion, His Excellency would make the term fixed for Salem applicable to all the Presidency, except it could be shewn that the tide of prosperity had set in later, or rose more slowly, in some districts than in others, or that some districts had been exceptionally depressed. No principle was more sacred in the eyes of Government than that the ryot has prescriptive rights in the land, rights of indefeasible occupancy on certain conditions, trenching very nearly on proprietary rights, and composing, with the rights of Government, a sort of common ownership while cultivation is carried on, which it is difficult to define, and is without parallel in the land tenures of England. As to the third suggestion, Lord Napier was against the principle of a permanent money assessment. To use his lordship's language —"the principle of a money assessment in this Presidency is one which requires to be vigilantly resisted, for it is not only advocated by many of the able Bengal Civilians, but it is even supported by some of our own economists, who retain a deep impression of the mischief which was wrought by high assessments in past times, and under other circumstances. In my humble judgment, this Government should set its face stubbornly against such an innovation for the following reasons"—(1). The increase in the value of agricultural produce is an increase to which the cultivator contributes nothing; this increased value is owing to improvements in markets over which the cultivator has no control, or to the discovery and depreciation of precious metals in which he has had no part; so that to give him the whole benefit of the expanding value of his commodity would be simply to reward him for the exertions of others, or for the accidents of the period in which we live. (2). The cultivator does not expect to be put on a permanent unalterable money rent: he will accept the

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assessment when it suits him; he will not, and cannot, accept it to his prejudice: when the harvest is abundant, he will cheerfully pay and wear the face of an English farmer; but in bad seasons, he will be a Hindu ryot and beg for remission: if the ryot can call upon the State to remit, surely the State might participate in a rise in prices. (3). The land revenue will long be the bulk of the public revenue in India: Government is the only capitalist, and the only guarantee, in India; and a development of its financial power, now that the era of wars and conquests has passed away, may really be regarded as identical with a development of the national welfare. Mr. Arbuthnot seems to be in favour of erecting a class of landlords between the Government and the ryot; but this, instead of proving a benefit to the cultivator, might turn out the reverse, by simply raising a race of middlemen between a benevolent Government and a rack-rented ryot; so that the very interposition of an idle class, living on the difference between the rent paid to the State and the rent received from the working man, would of itself defeat the object of Government in granting moderate rates of assessment, and would introduce the evils of the Zemindari system without its agreeable and redeeming features. His lordship was quite in favour of making a settlement with landholders for 21 years, such settlement being open to revision on the termination of that period; but he very gracefully expressed his readiness to accede to a period of 30 years, by way of effecting a compromise with his honorable colleagues. As to the fourth suggestion made by Mr. Arbuthnot, Lord Napier heartily concurred with that gentleman in the propriety of at once placing the Settlement establishment on a proper footing—and for three reasons, viz., to secure celerity and efficiency; to secure an equal and consistent course in all parts; and to save the country from neglect by not taking away Collectors from their proper work. His lordship was also quite in favour of substituting, not only in Salem, but in all the districts, a water cess or light percentage on the wet assessment payable by each holder, in lieu of the ancient customary service to which occupants of irrigated land are liable for the repair of minor irrigation works.

The first of the papers which we publish elsewhere on this subject is the formal record of the views of Government, based on the minutes of his lordship and his colleagues. It is there pointed out, by a calculation worked out by Mr. Hudleston, the Revenue Secretary, that the net result of the proposed new settlement of Salem was capable of being reduced to a loss of 1,14,013 rupees, but that Government could not in the interests of the community afford to sacrifice even that amount out of a revenue avowedly paid with ease. It is further pointed out that the key to the financial result was the commutation rate adopted by the Settlement officers for converting the Government share of the produce into money, which they deduced from the price lists of forty-three years extending from 1821-22 to 1864-65, the earlier years of that period being years of low prices such as were never likely to occur again. On the other hand, taking the average of twenty years from 1844 to 1864, the result would shew no more than a loss of 49,025 rupees out of a revenue of 16,01,628 rupees, or three instead of seven per cent, which reduced loss the Government were willing to sacrifice, as the price of securing for Salem the benefit of the expensive operations which had been carried out. With this view, they called upon the Board to report whether they saw any objection, and whether the same term of years could not be made appli-

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cable to all the districts of the Presidency; and considering the great difference of opinion prevailing in Council as to the duration of the money settlement to be imposed in connection with the revised assessment, they resolved to refer the point specially for the orders of the Secretary of State. On this, we find that the Hon'ble A. J. Arbuthnot minuted again, pointing out that since the recent discussion, he had read the correspondence in the Parliamentary Blue Book for the years 1865, 1866, and 1867, on the subject of a permanent settlement of the land revenue in India, and gathered that the Home Government were clearly in favour of a permanent money assessment: he, therefore, felt that it was proper to point out to the Secretary of State the inapplicability, under a ryotwari system, of a principle which threw the adjoining waste lands into holdings on which revenue is paid, whenever it might be deemed proper to declare the assessment permanent; and he suggested two points on which the specific instructions of that authority should be sought. Mr. Arbuthnot's suggestions were adopted and embodied in the despatch to the Secretary of State, which is the second of the papers we now print. In addressing the Home Government, the Madras Government took a retrospect of the views which obtained, and the discussion that ensued, on the proposals for a general revenue survey and settlement of the Presidency coming under consideration. This retrospect may be thus condensed. The Government of the day thought it undesirable to fix the *grain* assessments in perpetuity, but were in favour of declaring them unalterable for 50 years. They also thought that the commuted money rates should vary with the rateable money value of the standard crop; but not to have too frequent changes, they recommended that prices should be fixed once in seven or ten years on the average of the same period. The Honorable the Court of Directors who then held the reins of power, were, however, in favour of fixing the commutation rates for 30 years as in Bombay and in the North-Western Provinces, and for re-adjusting *both the amount of the grain assessments and the rate of its conversion into money* after that period according to circumstances. This principle was repeated by Lord Stanley in 1858; and here the discussion terminated. It was revived in October 1861, when the Government of India forwarded to this Government Colonel Baird Smith's report on the famine in Bengal, and asked their opinion as to the advantages of a permanent settlement for this Presidency, or of legislative sanction for settlements for terms of years. In reply they were informed that the ryotwari system of Madras was practically a permanent settlement, and that this Government decidedly objected to any extension of the zemindari system which alienated from the State all waste land as a source of future additional revenue, and that they saw no advantage in legislative sanction for settlements for terms of years, which might hamper the Government without improving the condition of the ryot. The subject of a permanent settlement was again brought under discussion by Sir Charles Wood's despatch of July 1862. The Board of Revenue were called upon to report, but that body made no reply; and our Government did not wonder at their hesitation, because there was an ambiguity in the despatch when it was attempted to apply its arguments and its instructions to the state of things which exist here. Supposing the Home Government meant to limit absolutely the maximum amount of the land revenue in this Presidency when certain conditions were fulfilled, then this Government would heartily concur with the opinion already recorded on previous occasions, "that the time has not arrived, and is probably very

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distant, when any such measure could be adopted without serious injury to the interests of the community, and of the State as representing the community. Then, adopting the views and almost the very words of Lord Napier, our Government went on to observe—"The demands on the resources of the Government on account of improved administration are constantly increasing, and are likely to increase for a considerable period at a very rapid rate; and the improvement of the Government revenue from the extension of cultivation over the large area of culturable waste, is one of the most valuable and legitimate sources of supply to meet those demands to which the Government can look, and on which they may confidently rely; and we are of opinion that the Government would not be warranted in relinquishing any such means for aiding the development of the country, or meeting those claims for most necessary improvements, which are loudly demanded in almost every department. Irrigation works, sanitary measures, communications, education, jails, and many other branches of the administration will, for some time to come, tax to the utmost the resources of the State to effect the amelioration which they require, and demand not only that no additional source of revenue shall be relinquished, but that all shall be improved to the utmost." These are honest, out-spoken words, and reflect all credit on the statesmen who are now at the head of affairs. There is no shrinking from the responsibilities of their position, or any shutting of their eyes to the paramount demands of the people and country committed to their care. The despatch is a manly out-spoken expression of opinion on the part of men conscious of their responsibilities, and of the obligation that lies upon them to lay the whole truth of the case before the Home Authorities, without weakly falling in with the views of the autocrat in Westminster. They at once admit that we need more irrigation works, that our sanitation must be progressive, that our communications have largely to be extended in order properly to develope the resources of the country, that the very administration has to be improved; and that for all this, we must have more revenue than that which we at present draw from the country, the only legitimate and justifiable sources of this additional revenue being the extension of cultivation to land now lying waste, and the improvement of that already under cultivation. This Government then very justly and logically point out that our right to revenue from land is limited by immemorial custom, and is derived solely from ancient authorities, so that it would be quite right to declare to landholders that the *grain* assessments would be permanent; but that at the same time the Government were not called upon to fix the *money* rates for ever, because the ryot is certainly not entitled to a monopoly of the advantages accruing from a rise in prices. In other words, this Government correctly hold that, however wise and politic it may be to relieve the land from oppressive burdens, there should nevertheless be a reciprocity between the State and the ryot as to advantages and disadvantages; and impressed with the justice of these views, they finally recommended that the *grain* rents might be made permanent, but that the *money* rates should be unalterable for only 30 years.

A reply was received in due course, in which the Secretary of State approved of a period of 20 years being adopted for calculating the new commutation rates, and of levying a labour cess in lieu of the ancient *kudimaramut*, or customary village service for the maintenance of irrigation works. In making this announcement, his Grace the Duke of Argyll, however, blew a blast, which in tone was the very opposite of that

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which for some time had proceeded from the council chamber of the India Office. Whereas it was before laid down that the ryot was to have the full benefit of all improvements, his Grace was now not even willing to make the *grain* assessments permanent, and content himself with the liberty to alter the money rates after a time in just proportion to a rise in prices; and he defends his narrower policy on the ground that the Government themselves had declared that the time had not arrived, and was not likely to arrive for a long time to come, for limiting the maximum amount of the land revenue. Taking higher ground than this, his Grace adds that, for the very same reason that this Government wished to retain waste lands as a source of additional income, he could not sanction the surrender of any such legitimate source of revenue as the share of Government in the increased value of land, brought about by improved administration and public works, such as irrigation works and railways. The Duke of Argyll does not intend, he says, to depart from former instructions to keep the assessment distinct from the sum paid for water supplied; but adds that these instructions are not inconsistent with the Government, on a revision of assessment on the termination of the period for which it was made, receiving its due share of the improvement in the value of the land effected by water being brought within reach of it. We venture to affirm that this view is not just; and so this Government think, though they do not assign the reason we are prepared to assign in so many words. We quite agree that it would not be unjust that the Government should share in the profits of the ryot, where those profits accrue to him by a rise in prices, brought about by circumstances over which he could not possibly have any control; but we certainly cannot see why he should lose any portion of the benefits his land has gained by the employment of water which he himself has raised, or for which he has paid. If the ryot did not pay for the water, it would be quite another thing. Then the Government could justly claim to share in the improvement which they had gratuitously effected; but where the ryot pays a water rate calculated not only to cover the cost of the fluid supplied to him, but to yield a percentage on the outlay expended in the construction and maintenance of the irrigation work supplying that fluid, then we contend that the obligation on the part of the ryot is at an end. He has paid for the commodity you have sold him, and you have no right to say you must now give me a share of the advantages accruing from your employment of the commodity I have sold you and for which you have fully paid me already. Mr. Arbuthnot, no doubt, saw the inequality of the principle laid down by the Secretary of State, and he accordingly records a minute objecting to this portion of the despatch. On their part, the Government communicated the despatch to the Board of Revenue and the Director of Revenue Settlement, in view to their acting upon the instructions with which the despatch closed, viz., to generally inform occupiers of land that the recent assessments made by the Settlement Department will be revised after 30 years; but they resolved at the same time to bring again under the consideration of the Secretary of State the expediency of making the grain values permanent. Meanwhile the Board of Revenue objected to the period of 20 years being taken for the calculation of the commutation rates. They urged that this period took in five years only of low prices, while the remainder was made up of ten years of high prices, and five of exceptionally high prices, so that the term selected represented an abnormal condition of the local grain market. They gave several reasons in sup-

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port of their views, and deprecated the adoption of a higher commutation rate for Salem than that proposed by Mr. Puckle, by Mr. Master, and by themselves. The sacrifice of £15,000 for a province larger than Devon and Somerset combined was small, they thought, compared with the risk; and while objecting to the same term of years for the commutation rates being applied to all districts, they urged that the past history of this Presidency was replete with painful evidence of the ruinous consequences of over-assessment, and that the lesson had been too dearly bought to be disregarded. They at the same time gave it as their opinion that it would now be impossible to enhance the assessment where it had been already revised, and promised to write again on the subject of the duration of the assessment. The Government, however, could not agree in the views of the Board, except so far as not to interfere for the next 30 years with the settlements in the districts the assessment of which had been already revised. Then, as regards their resolution to address the Secretary of State again on the subject of making the grain assessments permanent, they forwarded a despatch to the Duke of Argyll, which will be found in its place in another part of our columns. It will be there seen that our Government press the political advantage of giving occupiers of land direct interest in the stability of our rule, by declaring that the actual quantity of the crop now taken will never be increased, and the still greater social advantage of providing a really popular and safe investment for the daily increasing wealth of the country. They point out that the heavy charge of revising assessments every 30 years would be obviated, because the expensive part of the process consists in classifying and investigating soils, whereas the mere adjustment of the commutation rates can be attained without the aid of any special establishment. Improvements in land always take the shape of improvement in prices, in which the Government will share by their plan of revising the money rates. There is no doubt that this is the just and equitable mode of treating the subject. It is fair to the State, and it is fair to the people. The former principle of giving the ryot the full and entire benefit of all improvements was entirely one-sided. It benefited the ryot alone in the exact proportion that prices increased; whereas the State, which has to protect all branches of the community alike, has to meet increased political and social requirements of all kinds with exactly the same amount of revenue. Hence arose the necessity for taxation on incomes and on justice, and for reducing establishments, which might have been altogether avoided in India, and are certainly utterly uncalled for in Madras. Our plan of looking to cultivation extending to waste lands for additional revenue, and of sharing with the ryot in improvement in price, is a statesman-like measure which does not injure the cultivator, and avoids all annoyance to the other classes of the community. Such a measure it is impossible to carry out in Bengal, where all the land has been parcelled into Zemindaries, the waste chucked into the several holdings, and the payment from each feudatory is fixed and unalterable. We can well see that, in their extremity, the Government might there excusably demand a percentage of incomes to meet the increased wants of the general community. But Madras, and we believe Bombay also, stand on a very different footing. We want no income tax here; and an income tax on us is simply unjustifiable: it is in fact making us pay for bad government in Bengal. Our revenue system is a happy one. It gives us an increasing income with the increase of wealth and prosperity in the country. As waste lands come under the husbandman's plough, he cheerfully contributes his quota

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to the great land revenue of the country. As prices rise, he is happy to share with the State the advantages that have accrued to him, either by the direct operation of the State, or by those advances in countries and among peoples which he has had no hand in effecting. There is a limit, however, to this sharing system, and that limit has been happily fixed by our Government. They say let us share in an increase of prices, but don't let us demand more than the present *quantity* of grain calculated as our share of the ryot's crop. This is what they mean by making the *grain* assessments permanent, leaving the money values to be adjusted after certain periods according to the market of the day. This is a happy arrangement, and must prove substantially advantageous both to the cultivator and his great landlord. It will give the husbandman a direct interest in his land and in its improvement, for the greater the profits the greater his share of the out-turn; while the State has legitimate sources of increased revenue in rise of prices to meet the increased and growing demands of the age. We trust that our Government will not be turned aside from their present policy by random edicts from Westminster. A respectful firmness must surely be successful in the end. Our Government is strong. Lord Napier has grappled with his subject, and he has able advisers in such men as Mr. Arbuthnot and Mr. Sim.

HIGH COURT—MADRAS.

HOLLOWAY AND INNES, J. J.

Hereditary right to manage Dévastan—Pagoda Committee—

A sued B to establish his right to manage a certain Dévastan, and to recover the temple property forcibly taken possession of by B. A contended that the right vested in the family, that he was the senior member, and that the Pagoda committee had confirmed him. B contended that his father had managed, and, as at the time the family had divided, he was entitled to succeed.

HELD *that, as A was the senior member of the family, and had further been confirmed by the Committee, he was entitled to the management.*

R. A. No. 28 *of* 1869.

Vasudeva Kakotaiya *v.* Vishnu Kakotaiya.

THE plaintiff brought this suit to establish his right to the management of the Vishnumoorti dévastan in the village of Madakai, and to obtain possession of certain lands belonging to the dévastan producing annually Rupees 322-2-4, exclusive of a tasdik of Rupees 8 per annum together with mesne profits for three years from 1864 to 1866. The plaint set forth that the right of management of the temple was vested by custom in the senior member of the family; that on the death of plaintiff's father's younger brother (first defendant's father) plaintiff was appointed manager by the second, third, and fourth defendants, who were the committee appointed under Act XX of 1863, and received a sunnud from them in 1864; that in the same year the first defendant forcibly took possession of the temple property, and has since enjoyed the lands, though plaintiff has paid the assessment on them. The plaint further stated that the land No. 3, situated in the village of Madakai, was wrongfully enjoyed by fifth defendant under an alleged usufructuary mortgage bond, executed by the father of first defendant during his management. The first defendant denied that plaintiff's father had ever managed the dévastan, and pleaded that, as the family was divided at the time of his own father's death, he was entitled to succeed to the management. He also asserted that the produce of the plaint lands had been over-estimated by the plaintiff. The second, third, and fourth defendants did not defend the suit. The fifth defendant stated that he held land No. 3 under a usufructuary mortgage executed in 1859 by the first defendant's father, and that, as stated in the deed, the money was advanced by him to defray certain expenses connected with the dévastan. The issues raised were—first, whether the right of managing the dévastan was hereditary in the family of the plaintiff and first defendant, and whether the plaintiff as senior member of the family was entitled to it; second, whether the produce of the plaint lands had been correctly stated by the plaintiff; and third, whether the debt for which a portion of the land was mortgaged to fifth defendant was incurred on account of the dévastan.

The Hon'ble J. C. St. Clair, Civil Judge of Mangalore, found the first issue in favour of plaintiff from a proved order of succession, as well as from the sunnud granted to plaintiff as senior member of the family after the death of first defendant's father. As to the second point, he held that, as the rent of the temple lands had been applied to the maintenance of the temple by the first defendant during his wrongful pos-

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session, he need not pay them now to the plaintiff; but he must reimburse plaintiff for the assessment he had paid, which should have been provided out of the temple funds. As to the mortgage, Mr. St. Clair held it to be proved, and added that as plaintiff had assisted the late manager, and must have been aware of the mortgage, he could not object now as he had not done so before. The Civil Judge, therefore, decreed that the defendants should make over to plaintiff the plaint lands, except 24½ podi-pads assessed at Rupees 12 and now in possession of fifth defendant under the mortgage deed; that first defendant should pay to plaintiff Rupees 161-13-10, the amount of assessment paid by him up to the date of the decree. Further, the first defendant to pay plaintiff's costs, and the plaintiff to pay those of the fifth defendant. From this decision the first defendant only appealed. Strinivasa Charriar for the appellant; Sunjiva Row for the respondent. The High Court delivered the following

Judgment:—14th January 1870.

It is contended that the only question is one of nomination by the committee. If so, the plaintiff is entitled as their nominee; and his removal could only be for cause, and none has been shown. If it is a question of a prior right only confirmed by the committee, then no ground has been shown for questioning the conclusion of the Civil Judge that that prior right was in plaintiff as senior member; and, if confirmation was needed, the act of the committee was such. The appeal should be dismissed with costs.

INNES AND COLLETT, J. J.

Transfer of interest in charity land—Subject to trust—

In a suit for the recovery of certain land attached to a Tiruvassel, and sold by the trustee to the plaintiff under a deed of sale, one of the pleas set up was that it was contrary to Regulation VII of 1817 to sell charity property. It was then contended by plaintiff that the endowed land was not sold to him, but simply the defendant's right to manage and improve the endowment. The suit was dismissed by the Civil Judge on the preliminary objection that this plea could not hold good; that the sale deed purported to be an absolute sale; and that such a sale of charitable property was contrary to the Regulation quoted.

HELD *by High Court, remanding case to be tried on its merits, that there was nothing in the Regulation to prohibit an alienation of property charged with a trust, nor was there any other provision of law against a transfer of interest coupled with the performance of a charitable trust.*

S. A. No. 390 *of* 1868.
(Civil Mis. Pet. 234 of 1869.)
Ragunada Naiken and another *v.* Chinappa Chetty *alias* Subramania Chetty and six others.

THE plaintiff sued to recover possession of 91¾ gulies of nunjah land from the second and third defendants, being part of some land purchased by him from first defendant under a deed of sale A., dated 2nd May 1864, valued with buildings thereon at Rupees 603; also to establish his right to the said land under said deed of sale, value Rupees 700; and further to recover Rupees 220, the value of building materials damaged in consequence of a complaint preferred by third defendant, through his agent, to the Sub-Magistrate of Mannedam, as well as to recover the fine of Rupees 20 imposed upon him by that authority on said complaint. The third, fifth, and sixth defendants raised a preliminary objection that the plaint was over-valued at Rupees 1,543, and on the report of its Amin the Court estimated it at Rupees 1,371-2-0. The plaintiff alleged that the forefathers of first defendant left certain land and a tiruvassel in Coultragai village for the festival of Sree Soundraja Permaul of Tirucanapuram; that the said family enjoyed the lands and performed the charity. The lands were registered in the pymash accounts. In March 1826 the lands attached to the said tiruvassel were mortgaged for Rupees 67 on usufructuary tenure by the uncle of the first defendant to the father of the second defendant. The mortgagee enjoyed the property, and in May 1864 first defendant redeemed the land from the mortgage and sold his proprietary right therein for Rupees 700 to plaintiff and executed to him a deed of sale (A). Plaintiff received possession of the land except the waste land Nos. 62 and 64 in the pymash registry, which were held by second and third defendants. The tiruvassel was a thatched building, and plaintiff began to build it in stone; he expended Rupees 500, and had other building materials on the ground, when third defendant preferred a complaint to the Sub-Magistrate of Nannelam that the tiruvassel and its lands were common to the village community; and that the plaintiff had illegally commenced building thereon. Plaintiff further alleged that the Sub-Magistrate had exceeded his jurisdiction by questioning the validity of A, and by fining him (plaintiff) Rupees 20 on the said complaint. The first defendant admitted the plaint; the fourth and seventh defendants were *ex parte;* the other defendants put in various pleas, among which was the plea that the sale of charity property was contrary to Regulation VII of 1817; while the ninth defendant, the Sub-Magistrate, answered that plaintiff's suit against him was contrary to Act XVIII of 1850; he had not exceeded his authority, and knew nothing of the

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alleged destruction of the building materials; he was not liable for their loss. The Principal Sudr Ameen of Negapatam, Maurice Cross, Esq., considered the whole case fraudulent and unsatisfactory, and he dismissed the plaintiff's suit with all costs. From this decision the plaintiff appealed to the Civil Court of Tranquebar. The Civil Judge, E. F. Elliott, Esq., without entering into the merits of the case, was of opinion that the suit was barred in point of law, because the property in dispute was for charitable purposes, and could not, under Regulation VII of 1817, be alienated. It was contended for the plaintiff that the endowed lands themselves were not sold to him, but only first defendant's right of management and improvement of the charitable endowment. This view the Court could not take in the face of the deed of sale A, where the absolute sale of the lands is clearly laid down and intended; therefore the Judge held it was a most decided alienation of endowed lands, which the first defendant had not the legal right to alienate, and, therefore, it was invalid in law. In this decision Mr. Elliott held that he was strengthened by the decree of the late Sudr Adawlut, 17th April 1851, S. A. 50 of 1850. He, therefore, affirmed the decree of the lower Court, and dismissed the suit with all costs. The plaintiff appealed to the High Court. Strinivasa Chariar for the appellant. Sunjiva Row for the respondents. The High Court delivered the following

Judgment:—*7th January* 1870.

The sole ground upon which the lower Appellate Court has decided this case is that, whatever the nature of the first defendant's interest in the property, his attempt to transfer the same to the plaintiff was invalid, because the property was charged with a trust in favour of a religious charity. There is nothing in the Regulation referred to to prohibit any such alienation, and we are not aware of any other provision of the law against it; nor do we see how it can be contended that any interest in the property, though coupled with the performance of a charitable trust, may not be transferred by the possessor of such interest; or, if the interest is limited to a right to manage the property, why such right of management may not be similarly transferred. We are, therefore, of opinion that the appeal must be remanded to the lower Appellate Court for decision upon the merits. The costs hitherto to be costs in the cause.

HIGH COURT—CALCUTTA.

Peacock, Sir B., *Kt.*, C. J., and Mitter, J.

Sashi Bhusan Banerjee (plaintiff) *v.* Tarachand Kar and others, (defendants.)*

Evidence—Unstamped bond—Intention to evade the Stamp Laws.

A bond executed between a plaintiff, who sued upon it, and the defendants, contained the following clause, "And, inasmuch as we (the defendants) "are urgently in want of money and are "unable to procure a stamp at the moment, we "have executed the bond on plain paper. Should "it be necessary for you (plaintiff) to bring a suit "against us, whatever penalty you may have to "pay shall be made good by us with interest."

The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the Stamp Law, and refused to receive evidence to the contrary. He also refused to admit the bond in evidence.

Held, *on reference to the High Court, that the claim in question did not amount to an agreement to evade the Stamp Laws. The Judge might have inferred from it that it was the intention of the parties to evade the Stamp Laws, but in that case he should have heard evidence to the contrary.*

This case was referred for the opinion of the High Court by the Judge of Small Cause Court at Ranaghat, under the circumstances disclosed in his order of reference, which was as follows:—

Plaintiff sued on an unstamped bond, and, at the time of filing his plaint, deposited with Nazir the proper amount of stamp duty and penalty required in accordance with Clause 2, Section 17, Act X of 1862.

On the case coming on for trial defendants' pleader objected to the admission of the bond in evidence, on the ground that the omission to execute it on stamped paper arose from an intention to defraud the Government by evading payment of the stamp duty. (Section 15, Clause 1, Act X of 1862.)

On this subject the bond itself contains the following stipulation, "And, inasmuch as we (defendants) are urgently in want of the money and are unable to procure a stamp at the moment we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest."

It seems to me that this amounts to nothing less than a deliberate agreement between plaintiff and defendants to evade the Stamp Law. There can be no doubt that, had defendants paid the money and so released plaintiff from the necessity of bringing a suit, as it is natural to suppose the intention of both parties to have been at the time, Government would have been defrauded of the stamp duty required for a bond of the amount specified.

Supposing, as is probably the case, that stamp paper was not procurable at the time of the loan, which took place upwards of four years ago, plaintiff, if he really intended to carry out the provision of the Stamp Law, might have had recourse to the Collector under Clauses 1 or 2 of Section 15, Act X of 1862.

It is contended for plaintiff that the parties are not in *pari delicto*, and that it is unjust to allow defendants to take advantage of their own wrong; but I am of opinion that the legal maxim in question has no bearing on the present case, and, as I hold that the words of the contract translated above indicate an intention to evade the Stamp Law, I have refused to receive oral evidence to the

* Reference from the Judge of the Small Cause Court at Ranaghat.

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contrary, and dismiss the case contingently on the opinion of the High Court.

The case was sent back to the Judge to state the point of law upon which he wished the decision of the Court, which was stated by him as follows in returning it:

The question on which I request the opinion of the High Court, and which I regret not having stated more distinctly before, is whether I have rightly construed the extract from the bond before quoted, as containing an agreement between plaintiff and defendants to evade the Stamp Law, which would preclude the Court from admitting the document in evidence under the provisions of Section 17, Act X of 1862.

Baboo *Braja Prasad Bose* for plaintiff.

The opinion of the High Court was delivered by

Peacock, C. J.—We are of opinion that in point of law the construction of the Judge of the Small Cause Court is not correct. The bond certainly did not contain any agreement between the plaintiff and the defendants to evade the Stamp Laws. The stipulation in the bond if true shows that the borrowers were urgently in want of the money and were unable to procure a stamp at the moment, and that they, therefore, executed the bond on plain paper. It was then provided that, should it be necessary for the plaintiff to bring any suit on the bond, whatever penalty the plaintiff should have to pay would be paid by the defendants with interest. That did not amount to an agreement to evade the Stamp Laws. It might have amounted to evidence from which the Judge might have inferred, as a matter of fact, that it was the intention of the parties to evade the Stamp Laws; but in that case it would have been the duty of the Judge to receive oral evidence to the contrary, which he refused to do.—*29th May* 1869.—*Bengal Law Reports, Vol. III, Part XVI.*

Norman and Jackson, E., J. J.

Jalu Namdar and another (defendants) *v.* Beicha Namdar (plaintiff.)*

Act XX of 1866, *Sections* 2, 50—*Registration—Priority of unregistered deed—Lease to take juice from date-trees.*

The right to take juice from date-trees is not, according to Section 2, Act XX of 1866, *a right to immoveable property, but falls under the definition of moveable property.*

A registered lease to take juice from date-trees cannot, under Section 50, *Act XX of* 1866, *have priority over an unregistered one of a prior date.*

Baboo *Ambika Charan Banerjee* for appellant.

None for respondent.

The judgment of the Court was delivered by

Norman, J.—In this case the appellants, who are the defendants, claim a right under a lease granted by the proprietor to take the juice of 320 date-trees in Mauza Sunhowli. The plaintiff claims under a similar lease of an earlier date, which is unregistered. The appellants contend that their lease, though later in date, is entitled to priority over that of the plaintiff, inasmuch as it is registered. Section 50 of Act XX of 1866 enacts as follows:—"Every instrument of the kinds mentioned in Clauses 1, 2, and 3 of Section 18 shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property."

Now, the right to take the juice of the date-trees, will not fall within Section 18, Clause 1, unless it is a right or interest to immoveable property. Looking to the definition of immoveable property, in the 2nd Section of the Act, it excludes "standing timber and growing crops." The definition of moveable property in the same section includes "growing crops, grass, fruit upon trees, and property of every other description, except immoveable property."

The question is, does the right to cut date-trees and take the juice produced by them fall within the description of immoveable property, as the term is limited in the 2nd Section.

The definition is as follows, "Immoveable property includes land, buildings, right to ways, lights, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth, but not standing timber, growing crops, nor grass." The juice of date-trees, from which sugar is made, being produced annually at the season of growth, falls nearly within the description of a growing crop. The right to take the juice in future years from standing trees, from which it is produced without cultivation, is more nearly described as a right to, or benefit arising out of, standing trees or timbers, than a right or benefit to arise out of land, such as is described as immoveable property. On the whole, therefore, though not without some doubt, we think that the 50th Section has no application to a lease of a right to take the juice of date-trees.

We, therefore, affirm the decision of the lower Court. The appeal must be dismissed with costs. —*28th August* 1869.—*Idem.*

Bayley and Hobhouse, J. J.

Abdul Hamid (defendant) *v.* Dongaram Dey (plaintiff.)*

Enhancement—Jurisdiction of Collector.

A suit for enhancement of rent of a dwelling-house in a village is cognizable by the Collector.

Baboo *Hari Mohan Chuckerbutty* for appellant.

Baboos *Nalit Chandra Sen* and *Rama Nath Bose* for respondent.

Bayley, J.—The plaintiff in this case sued the defendant as holding certain *Bhita* lands in his use and occupation, which *Bhita* lands he alleged were part of his taluk purchased by him.

The defendant's allegation was that the lands were not in the taluk alleged by the plaintiff, but were in another taluk in which he was a co-sharer with the plaintiff.

The first Court, after a remand by the lower Appellate Court, finally decided, on the 21st October 1868, that it had not the "smallest doubt "that the lands are part of plaintiff's purchased

* Special Appeal, No. 2,755, of 1868, from a decree of the Subordinate Judge of Bhagulpore, dated the 6th [illegible], affirming a decree of the Munsiff of that district, dated the 28th February 1868.

* Special Appeal, No. 780, of 1869, from a decree of the Judge of Tippera, dated the 26th January 1869, affirming a decree of the Officiating Deputy Collector of that district, dated the 21st October 1868.

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"talnk;" and then the Court goes on, "as no "objection has been made to the rate of rent, "and as defendant, having held and enjoyed the "lands since the sale, is liable to an equitable rent "for them, I give a decree for Rupees 10-14-0, and "costs Rupees 4-4-0, and fees Annas 8-9. Total, "Rupees 15-10-9."

On appeal, the Judge records: "I think with "the Deputy Collector that the defendant holds "rent-paying land and land for which rent has "been received by plaintiff's predecessor, within "the plaintiff's taluk. The evidence is scanty on "this point, but I think sufficient." Then, as regards the rates, the lower Appellate Court remarks: "I do not think that the defendant in "his deposition on oath before this Court, and "which with the plaintiff's statement formed the "grounds from which to frame issues, raised any "objection as to the rates so that it is necessary "now to return this case for trial on this point." The lower Appellate Court then concludes its judgment by dismissing the appeal with costs.

The defendant appeals specially.

The fifth and the last ground is that the provisions of Act X of 1859 have reference only to lands held for agricultural and horticultural purposes, and not to lands on which actual dwelling-houses are erected, and held by persons other than actual cultivators.

In regard to the last plea that this being a case for lands for building purposes, the provisions of Act X of 1859 do not apply. *Kali Mohan Chatterjee* v. *Kali Krishna Roy Chowdhry** has been cited. But the facts of that case were totally different from the facts in this. There the building was part of a range of buildings in the centre of the town, and, therefore, the rent of those houses would not fall within the purview of Act X of 1859.

It is to be here also noticed that part of the land occupied by defendant was not occupied by the house, and besides this the point was not taken in either of the Courts below.

On the whole, I see no error in law in the judgment of the lower Appellate Court, and I would, therefore, dismiss this appeal with costs.—*12th July* 1869.—*Idem.*

HER MAJESTY'S PRIVY COUNCIL.

[BENGAL CASES.]

Zemindaries—Boundaries—Survey awards.

A Zemindar sued two neighbouring Zemindars for the recovery of 5,000 *beegahs as being within the boundary line of his Zemindary, and to set aside the awards made by the Survey officers with reference to the boundary line. Both the lower Courts dismissed the suit.*

HELD *by the Privy Council (affirming the judgment of the Courts below) that the Survey awards, if questioned in time, are not conclusive upon the question of title; and that their Lordships would be extremely reluctant to reverse the judgment of an Indian Court upon a boundary question, unless they were clearly satisfied that it was wrong.*

* 2 B. L. R., App., 39.

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Rajah Leelanund Singh *v.* Rajah Mohendernarain Singh and Rajah Jyemungul Singh, from Bengal; delivered 10th December 1869.

Present.

THE MASTER OF THE ROLLS.
SIR JAMES W. COLVILE.
JUDGE OF THE HIGH COURT OF ADMIRALTY.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

THE appellant is the present possessor of the large zemindary known as the Kurruckpore Mehals, which includes the whole of Pergunnah Singhol; and one of the Mouzahs composing that Pergunnah is called Kusbeh Budholee. This zemindary formerly belonged to one Rajah Kadir Ali, from whom it descended, first to his son Ikbul Ali Khan, and afterwards to his grandson, Ruhmet Ali Khan; but in 1842 it was sold for arrears of Government revenue, and was then purchased by Rajah Bidanund Singh, the father of the appellant.

Abutting upon Pergunnah Singhol and on the west and south of it is Pergunnah Chundun Bhooka. This includes the Mouzahs of Jankeepore, Ahsur Chand *alias* Kuchwa, and Ahsur Biscoond. The two former of these form part of the zemindary of the respondent Mohendernarain Singh, who is the son and successor of Rajah Nirbye Singh. The other village forms part of the zemindary of the other respondent, Rajah Jyemungul Singh, who is the representative and successor of Rajah Nuwab Singh.

The question in the suit is one of boundary between the two Pergunnahs, Singhol and Chundun Bhooka, *i. e.*, whether the 5,000 beegahs of which the appellant, as plaintiff, seeks to recover possession, form part of Kusbeh Budholee, and, therefore, lie within the proper boundary line of Pergunnah Singhol; or whether they are included partly in the villages of Jankeepore and Kuchwa, and partly in that of Biscoond, and, therefore, lie within the proper boundary line of Chundun Bhooka.

From this statement, however, it follows that the portions of the disputed land which are held by the respondents respectively may be so held by them by different titles; and that, although the principal question of fact, viz., the true position of the boundary line between the two Pergunnahs, is common to both, the one may, in respect of long possession, be in a more favourable position than the other; and that that which may be evidence against the one may not be evidence against the other. And this being so, it is perhaps unfortunate that the appellant's claims against the two respondents should be litigated in one and the same

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suit. The suit is brought not only for the recovery of the lands in question; but, as a necessary step towards that object, to set aside certain awards passed by the officers employed to conduct the revenue survey in this district, and to obtain a rectification of the boundary line as defined by them. The suit was brought within the period in which the law allows such awards to be contested in a regular suit. But their Lordships need hardly observe that the plaintiff in such a case has to overcome the strong presumption which the decision of such a question as this by competent officers after full local inquiry, made with the aid of a scientific survey of the locality, is calculated to raise against him.

It may be convenient, in the first place, to state shortly what is the effect of the survey proceedings which are impeached. The line laid down by the survey as the northern boundary of Pergunnah Chundun Bhooka, and the southern of Pergunnah Singhol, is not a river, but seems to be almost identical with the chain of hills which on the map of Hoolas Roy (A), which has been so much discussed in this case, are delineated as running east and west between the Jorbarara and the stream which he calls the Punjhairee Khoord. To these hills we may give the name, which is applied to them in some of the proceedings, of Suhoodree.

There was throughout the survey proceedings a dispute between the appellant and the respondent Mohendernarain Singh, or Nirbye Singh his father, touching the possession of the lands sought to be recovered from the last-named respondent. The earlier proceedings treated that portion of the land in dispute as falling within the Mouzahs of Pergunnah Chundun Bhooka, which belong to Mohendernauth. Mr. Brown was dissatisfied with this finding as being inconsistent with Hoolas' map (A); he objected to Birjobookun's map B, and directed that there should be a further investigation, and a comparison of the country with the map A. He also proposed to go himself to the spot and decide the question of possession. He never did so; and the question was finally decided by Mr. Quintin, after local inquiry and investigation, in his proceeding of the 24th of December 1847.

The case as to the lands sought to be recovered from the respondent Jyemungul Singh is somewhat different. When the survey of these lands first took place the appellant raised no claim to them. The contest was between the respondent Mohendernarain Singh saying that they belonged to his village of Ahsur Chand *alias* Kuchwa, and Jyemungul Singh saying that they belonged to his village of Biscoond. The decision was in favour of the latter.

In the final proceeding of December 1848, before Mr. Wood, (Appendix, p. 256,) and two years after the commencement of the dispute between the respondent, the appellant did intervene as third party, and ineffectually claimed the lands as part of Pergunnah Singhol. But his omission to come forward before that time affords a strong presumption that he was at the commencement of the survey out of the possession of these lands, if he had ever been in it.

These survey awards are founded on evidence of the actual possession. They are not, if questioned in time, conclusive on the question of title.

Their Lordships will now consider upon what evidence of title the appellant seeks to impeach them.

The earliest piece of evidence is the proceeding of 1816 before a Mr. Sutherland, described as a Registrar of the Civil Court of Monghyr, who appears, under the law then in force, to have exercised a jurisdiction in questions of possession similar to that which is now exercised by the Magistrates under Act IV of 1840.

The complaint was brought by Rajah Kadir Ali against the lessees of part of Pergunnah Chundun Bhooka, and seems to have been directed rather against encroachments upon wild and jungle land, for the purpose of collecting the forest products, than against any actual occupation of cultivated soil. One Rajah Juswunt Singh, however, describing himself as the proprietor and zemindar of Pergunnah Chundun Bhooka, intervened, and the question what was the true boundary between the Pergunnahs was thus raised between the two zemindars.

Those stated by the Zemindar of Singhol were:—"To the west is Gheedha Ghaut and Churhee Khoord, (by which we understand a line drawn from Gheedha Ghaut to Churhee Khoord,) to the east is Dabeedah and to the north is a great mountain, and south is Punjhairee Khoord."

The statement of Juswunt Singh was that the boundary of his lands extended "from the west of Dabeedah straight along as far as the Soordhobee and Sunkareerekh and Sireekabutan." It is not easy to identify all these names; but the conclusion to which their Lordships have come is, that this statement makes the southern boundary of Singhol that line of hills above called Suhoordree, which is admitted by the respondents to have been the dividing line as regards actual possession and enjoyment, and has been fixed as such boundary by the survey proceedings. If this be so, it follows that Juswunt Singh asserted no title to the land lying to the north of these hills, and between them and the Jorbarara; and that he did not treat that stream, or any other stream, under the name of Punjhairee Khoord, as the boundary between the two Pergunnahs. On the other hand, the issue thus raised between

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the parties seems to admit that the Punjhairee Khoord was to the south of that line of hills; and that the controversy was about the lands claimed in the present suit, or part of them.

Mr. Sutherland's decision was in favour of Kadir Ali, and directed that the disputed land should remain in his possession according to the before-mentioned boundaries, until the decision should be rescinded by an action under Regulation X of 1793. In 1817, one Budhnarain was sent by Mr. Sutherland to mark out the western boundary between the Pergunnahs, in accordance with the last-mentioned decision; and that, starting from Gheedha Ghaut and proceeding southward to some point or another, he did place certain boundary pillars is undisputed. His own statement, made on oath in January 1830, is, that they extended southward as far as the Punjhairee Khoord, and that that stream is south of the Punjhairee Kalan.

Juswunt Singh and Nirbye Singh, who then first appear on the stage, declined to take any part in this demarcation, and intimated that they intended to dispute Mr. Sutherland's order in a regular suit. No such suit was, however, brought.

It will be convenient here to inquire upon what parties this proceeding of 1816 was binding, and what lands did it cover?

It may be taken to have bound Juswunt Singh who was a party to it, and those who claim through him. It may, therefore, be taken to have bound Nirbye Singh, and, after him, the respondent Mohendernarain Singh. But is it binding on Jyemungul Singh, or was it binding on his father and predecessor, Nuwab Singh? That depends on the question how far either derived title from Juswunt Sing; and the evidence is unfortunately either very scanty or altogether silent on their connection with Juswunt Singh, and as to the time at which, and the manner in which, Pergunnah Chundun Bhooka became divided between two distinct zemindaries. The Principal Sudr Ameen in his judgment speaks of Juswunt Singh as the "moories" of the *defendants*. And "moories" is, we apprehend, the same word as "meeras," which, in Professor Wilson's dictionary, is defined to be the person through whom an inheritance is derived. On the other hand, the judgment of the Sudr Court speaks of the proceeding of 1816 as made against the ancestor of *one* of the defendants. Again, the report of Hoolas Roy alludes to the proceedings on a partition between Nirbye Singh and Nuwab Singh, and speaks of Juswunt Singh as the elder brother of both. Chunderchain Singh, (Appendix, p. 260, line 35,) a witness of Jyemungul Singh, also speaks of such a partition.

That the respondents, therefore, held their respective portions of Pergunnah Chundun Bhooka under a title which, up to some date, is a common one, seems probable; but there is little, if any, direct evidence of the fact, and still less of the date at which the separation in title commenced.

There is no statement in the proceeding of 1816 of the specific quantity of the land then in dispute, and the complaint seems to have been of invasion on the part of the tenants of Juswunt Singh occupying lands to the west of the westward boundary. Juswunt Singh, however, claimed all the land which lay south of the line of hills which he said was the southern boundary of Singhol and west of Dabeedah, (which we take to be the range of hills on the east of the now disputed land). The question was, whether south of the line of hills the eastern boundary of Pergunnah Chundun Bhooka was the Dabeedah range, or a line prolonging the line from Gheedah Ghaut to that line of hills up to the Punjhairee Khoord; and the controversy so stated seems to embrace the whole of the lands now in dispute.

The respondent Jyemungul Singh, whether bound or not by the proceedings of 1816, is certainly not bound by those from 1829 to 1832, in which Hoolas Roy and Motu Roy made their conflicting reports. These proceedings were occasioned by a dispute which arose between Rajah Nirbye Singh and the then Zemindar of Singhol, after the supposed partition between Nirbye Singh and Nuwab Singh, (Appendix, p. 47, line 60,) and were confined to that portion of the disputed land which is west of the Punjhairee Kalan, (Appendix, p. 46, line 7). It did not, therefore, embrace the land which the appellant now seeks to recover from the respondent Jyemungul Singh.

It was in these proceedings that, in order to get rid of the effect of the order of 1816, Nirbye Singh first raised the point that the Punjhairee Khoord mentioned in that proceeding was identical with the stream marked in map A. as the Jorbarara. Neither the respondent Jyemungul nor his immediate ancestor, Nuwab Singh, was a party to that issue, nor is the former responsible for the inconsistency which it involves, in claiming a boundary inconsistent with the admitted possession. On the contrary, some of the witnesses produced by him in this cause speak of the southern boundary of Pergunnah Singhol as the line of hills which has been assigned as such boundary by the survey proceedings, and such was the boundary asserted by Juswunt Singh in the proceeding of 1816.

We cannot find that Jyemungul Singh has in any way made the identity of the little Punjhairee and the Jorbarara a material question, unless it be by the 13th paragraph of his answer. And in that he seems merely to raise the question whether Budhnarain had lain down the western boundary, or the dispute of 1816 had extended further to the south than the latter stream. He does not admit that the southern

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boundary of the Singhol is the little Punjhairee, whether north or south of the line of hills. On the contrary, by paragraph 15 he distinctly asserts that the line of hills is the true boundary.

If the case rested here, their Lordships, considering the scanty evidence afforded by the proceeding of 1816, would have felt that no sufficient ground had been laid for setting aside the survey proceedings against the respondent Jyemungul Singh, or even against Mohendernarain Singh. The real difficulty in the case has been occasioned by the way in which the cause has been conducted in the Courts of India by the counsel for the parties, who seem in argument to have accepted as a fact that the southern boundary of Pergunnah Singhol was a river called the Punjhairee Khoord, and to have disputed concerning the position of this stream, and the accuracy of the map of Hoolas Roy. They probably took this course because they felt pressed by the effect of the proceeding of 1816. The Principal Sudr Ameen's judgment proceeds almost entirely upon the preference which he gives to the map of Hoolas Roy over that of Birjobookun. But the map of Hoolas Roy is really a document of very slight authority. He differed from the other arbitrator who was appointed conjointly with him to settle that particular dispute, and no final order was passed in that matter. His map and report were before the Revenue authorities when they made the survey and the survey awards, and were ultimately disregarded by them. When this case came on appeal before the Sudr Dewanny Adawlut, the Judges of that Court observed, as their Lordships think with great justice, that they were bound to treat the survey proceedings as correct so far as the appearance of the country is recorded therein, and, failing to find in the survey map any stream which corresponded with the stream set down in Hoolas' map, they rejected that map, reversed the Principal Sudr Ameen's decision, and dismissed the appellant's suit. Afterwards, on a suggestion that there was in the survey map a stream which might correspond with the Punjhairee Khoord of Hoolas' map, they granted a review, and directed a further local investigation into the existence of this stream by an Ameen. The Ameen made a report in which he describes an intermittent stream, dry in some places, flowing in others, which he traced in the jungle. The Judges of the Sudr Dewanny Adawlut upon this report adhered to their former judgment dismissing the suit. When the appeal was heard here we had not before us their reasons for this conclusion, and we caused a communication to be made to India, of which the result is that the final judgment of Mr. Raikes is now before us. That Judge, with better means of forming a judgment on such a point than their Lordships have on the materials before them, came to the conclusion that the stream described by the Ameen did not correspond with the Punjhairee Khoord laid down in Hoolas' map, or with the description given by the appellant's vakeels of the alleged boundary of his zemindary. Their Lordships, after full consideration of the case, are not prepared to say that that conclusion is erroneous. They must observe that upon a boundary question they would be extremely reluctant to reverse the judgment of an Indian Court unless they were clearly satisfied that it was wrong. If it had been shown that there was a well-defined stream corresponding, or nearly corresponding, with that laid down in Hoolas' map, they might have felt that, considering the proceedings of 1816 and the way in which the parties have conducted their case, the survey awards ought to be reversed. But, as the evidence stands, they feel that the position, course, and very existence of the Punjhairee Khoord are left in such uncertainty, that if the boundary laid down by the survey proceedings were altered, it would be impossible, with any certainty, to fix the boundary to be substituted for it. And in these circumstances they must humbly recommend to Her Majesty that the decree under appeal be affirmed, and this appeal be dismissed with costs.

Sebait—Rent—Variable character.

In a suit brought by the plaintiff against a sebait for the recovery of certain jummas as hereditary, and also as held at a fixed rent—

HELD *(reversing the decision of the High Court) that there was no satisfactory proof in the cause that these jummas were ever held at a fixed invariable rent; that to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a sebait; and that where the variablenes of the jummas was the normal condition, the mere naming a sum certain in connection with the grant of a descendible nature does not import of itself fixity to that sum, in the absence of positive words, or of other evidence to show that such was the original design.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Maharanee Shibessouree Dedia *v.* Mothooranath Acharjo, from Bengal; delivered 18th December 1869.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
JUDGE OF THE ADMIRALTY COURT.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS appeal was heard before their Lordships *ex parte.*

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The suit out of which it arose was brought in the Civil Court of Jessore by Mothooranath Acharjo, the sole plaintiff, against Maharanee Kestomonee Debia, described as sebait of a talook, dedicated to the service of the deity, and against certain other persons named in the plaint. It was brought to establish a title to certain jummas, and to recover possession of certain lands connected with them, which the plaintiff claimed by purchase from four of the defendants, Mahomedan ladies, who descended from one Gouromohun Biswas, a Hindoo, on whom, as the plaintiff avers, the right to the jummas transferred to him was originally conferred.

The present appellant represents the interests as guardian of her infant, which, at the commencement of the litigation, were represented by the Maharanee Kestomonee Debia, since deceased, his grandmother, appointed his guardian under the direction of his deceased father. The tenure, whatever its strict character, whether ryotwary or of a higher degree, is one held under the infant's title, as superior owner of the lands.

The jummas were claimed by the plaintiff as mourusue (hereditary), and also as held at a fixed invariable rent.

The appellant, the sebait, denies the hereditary character of the tenure, the invariable quality of the rent, and the purchase itself. She stated that the tenants of the jummas, from whom the plaintiff asserted that he had purchased, had not any hereditary tenure, and that they had surrendered such interest as they possessed to the appellant before the time of the alleged sale to the plaintiff.

Of the four defendants, the alleged vendors, three denied the sale and affirmed the surrender, whilst the fourth affirmed the sale and denied the surrender, agreeing, three of them with the appellant, and one with the plaintiff. They all, however, insisted on the hereditary character of their tenure.

The talook itself, with which these jummas were connected by tenure, was dedicated to the religious services of the idol. The rents constituted, therefore, in legal contemplation, its property. The sebait had not the legal property, but only the title of manager of a religious endowment.

In the exercise of that office she could not alienate the property, though she might create proper derivative tenures and estates conformable to usage.

The sale under which the plaintiff claimed was established by the decree of Mr. Seton-Karr, the Judge of the Civil Court of Jessore, who tried the cause.

On appeal from his decision it was affirmed by the High Court.

Two Courts, therefore, have established the sale to the plaintiff, and have decided against the validity of the alleged surrender.

Into the sufficiency of the evidence to support those several findings their Lordships do not propose to inquire; their judgment on this appeal will be confined to the question whether a tenure held at a fixed invariable rent has been established by the evidence.

The appellant insisted on the authority of Prosoonnocoomars' case, which she quoted in her answer, and which was relied on in agreement at the bar that a transfer of such a tenure as that set up in his case, which she termed a ryotwary tenure, could not be effected without the consent of the Zemindar or Talookdar, as the case might be, the immediate successor in estate. The Judges in both Courts decided that this tenure was one at a fixed rent, and that the case in question did not apply. On the question of its vendible character without the condition of the superior's consent, they pronounced no opinion. A question of this latter character is likely to be one so much affected by modern and local usage that it would be unsafe for an ultimate Court of Appeal to express an opinion upon it as a mere dry, legal question turning on the incidents of hereditary tenure. Their Lordships would be most reluctant to decide on an *ex parte* appeal any question of general consequence not absolutely necessary to the decision of the particular case.

If the decrees appealed against stood unreversed, the title to hold at a fixed invariable rent would, on the pleadings and especially on the judgments, be viewed as *res judicata* binding on the parties and those claiming under them.

Their Lordships think that there is no satisfactory proof in the cause that these jummas were ever held at a fixed invariable rent. One important element in this inquiry has been wholly lost sight of, namely, the nature of the sebait title, and its legal inability to be the source of such a derivative title. To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a sebait, and is not, therefore, presumable. Where variableness of jumma is the normal condition, the mere naming a sum certain in connexion with the grant of a descendible tenure does not impart of itself fixity to that sum, in the absence of positive words or of other evidence to show that such was the original design. In this case we start with a double presumption against the rent having been fixed, viz., that founded on the ordinary character of rents, and that derivable from the special character of the tenure. Another presumption arises in this case, that the rent was variable, from the circumstance that the only instrument which asserts positively that

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the jumma is to be at a fixed rent, is one of the three documents on which the signature of Mr. Skinner, the Magistrate, was fabricated. This fraud in tampering with evidence throws additional doubt upon this part of the case.

The terms of the surrender relied on by the High Court do not state that the rent is fixed and invariable; that document, on which the High Court laid great stress, appears to their Lordships to afford but a slight presumption that the sebait adopted and admitted that description of the tenure on which the surrenderer relied, though by accepting the surrender she acquiesced in the use of that description by them; and as the instrument does not say that the rent was fixed as well as the tenure hereditary, the implied recognition of the right can be raised no higher than the actual language warrants. The tenure, therefore, at a fixed rent was, in the opinion of their Lordships, not proved. The acts of the plaintiff cannot be ascribed to a valid title to possession under the circumstances of this dispute, since the only title insisted on in the contest between him and the superior, namely, the right to hold at a fixed rent, is not established, and the general right of the Zemindar or Talookdar to receive the collections, subject to account, till a valid claim to an intermediate tenure be established must prevail, *ad interim* at least, until the plaintiff, if he think it for his interest to rely on the mourusue title at a variable rent, establish it by a suit founded on that title, in which suit the true nature of the tenure, and its freedom from the conditions of the superior's assent to the transfer of the tenure, may be ascertained. Their Lordships will, therefore, humbly advise Her Majesty that this appeal be allowed and the decision appealed against reversed, and in lieu thereof the respondent's suit be dismissed with costs, and their Lordships think that the appellant should have the costs of the appeal.

Boundary dispute—Intermittent action of Revenue authorities—Equitable claims of holder—

Where, with reference to the definition of the boundaries assigned in a Talukdari pottah granted in 1805, *at a nominal rent, to the individual under whom the plaintiff claimed, and part of the holding was subsequently disputed by the Revenue authorities as encroachments on Government land, and where the litigation had gone on with various intermissions from* 1830 *to* 1863 *when the High Court decided, partly in favour of claimant and partly in favour of Government—*

HELD *that the only question in issue was whether the plaintiff was entitled to hold against Government, at a perpetual rent almost nominal, the large quantity of land, alleged to be comprehended within the pottah boundaries; but that there was nothing to prevent the Government from taking into consideration in the assessment of the revenue upon the resumed chucks, whatever equities might arise from such an expenditure as was represented to have been laid out in reclamation of waste, or from giving effect to any preferential right to a settlement ordinarily allowable to persons found in occupation of such lands, especially as plaintiff had held under a claim of right which was not put forward* malâ fide, *and which was made more colourable by the intermittent action of the Revenue authorities during a long period.*

Judgment of the Lords of the Judicial Committee of the Privy Council, on the appeals of Khajah Abdool Gunny *v.* the Commissioner of the Soonderbuns, on behalf of Government; and the Commissioner of the Soonderbuns, on behalf of Government, *v.* Khajah Abdool Gunny, from Bengal; delivered 26th January 1870.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR LAWRENCE PEEL.

THESE two appeals relate to different parcels of land; but they involve the same question, namely, the construction of the definition which a pottah, executed in 1805, has given of the boundaries of the land granted by it.

In both suits the plaintiffs were Abdool Gunny and other persons, claiming as purchasers from the original grantee under the pottah, and the defendant was the Commissioner of the Soonderbuns, representing the Government. The final decision in India was favourable to the Government in one suit, and adverse to it in the other; and each party being here as appellant in one case and as respondent in the other, it will be convenient to speak of them respectively as the plaintiffs and the defendant.

The pottah in question was granted on the application of one Ramdhone Chatterjee. By his petition to the Collector of Dacca, dated the 12th of Falgoon, B. S. 1211, he petitioned for Talookdaree Pottah of the woody Mouzah Aelateerkhallee and Mouzah Phooljhooree, per boundaries detailed at the foot, excepting what has been given in Butwara in Gursoonderbun, at the fixed gross rent of 349 sicca rupees, including cesses, with allowance for seven years for cultivation. And the boundaries stated at the foot of the petition were as follows:—

Mouzah Aelateerkhallee, bounded on the north and east by the Aeladoon, on the south by the Purwah river, the west by the river Bhyong down to the Khagdoon.

Mouzah Phooljhooree, bounded on the north by Phooljhooree Doon, on the east and south by Khagdoon, and on the west by the Bheeskhally river.

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The Collector on the 18th March 1805 submitted this petition to the Board of Revenue with a recommendation that its prayer should be granted; and, having obtained the sanction of Government, he executed the pottah in favour of Ramdhone Chatterjee on the 9th April 1805.

The original instrument was in Persian, and some additional uncertainty has been introduced into the case by the circumstance that in some of the proceedings the only evidence of the grant that was produced was a Bengalee translation of the Persian pottah.

Their Lordships have now at p. 57 of the second record what purports to be, and what they have no doubt is, an English translation of the Persian document. The translation of the Bengalee document is at p. 12 of the first record.

The only material difference between them is that, whereas the description of the western boundary of Mouzah Aelateerkhallee in the Persian document exactly corresponds with that given by the petition, on which the pottah was granted, namely, "the river Bhyong down to the Khagdoon;" the western boundary of that Mouzah is defined by the Bengalee document to be "the ebb of the Bhyong river as far as the Khagdoon."

In all other respects the two instruments substantially agree, each purporting to be a Talookdaree Pottah, granting the lands in question for ever, on the terms of paying no rent for the first seven years, and of paying, after the expiration of that period, a fixed immutable rent of 349 sicca rupees.

Rhamdhone Chatterjee obtained possession under this pottah, and the plaintiffs are admitted to have acquired his rights, whatever they may have been, by purchase. The devolution of their title it is unnecessary to trace.

The present litigation began as early as 1830. On the 12th March in that year, Mr. Dampier visited the spot as the Commissioner of the Soonderbuns, appointed under the then recent Statute, Regulation III of 1828. His functions were to define the limits of the Soonderbuns, which were expressly excepted from the decennial settlement and declared to remain the property of Government, and to resume and re-assess all lands under cultivation within their limits, unless the Government had by some means lost its right to resume them. This resumption was to be effected by proceedings under Regulation II of 1819, which was passed for regulating the procedure for the resumption and assessment of lands held under a disputed claim to hold them as lakhiraj.

Mr. Dampier's proceeding of the 12th March 1830 states that he found west of the Aeladoon an "abad" called Aela, the property of Moulvie Hafizoollah, (through whom the present plaintiffs claim); that the abovenamed Hafizoollah took possession of the lands of the jungles of the Soonderbuns, the property of Government, called it Aela, cultivated it, and was doing so then; that the "abad" was part of the reclaimed jungles of the Soonderbuns; and that the lands and jungles comprised in it did not form part of the decennially-settled zemindary of any Zemindar. He accordingly declared it subject to the claim of Government for resumption and re-assessment; but left to the Collector of the district the task of taking the steps necessary for the assertion of that claim, and directed a map of the jungles to be made, and notice of his proceedings to be issued to the Zemindars, Tahsildars, &c.

On the 5th March 1830 Mr. Dampier had passed a similar order as to Phooljhooree. The plaintiffs, or some of them, appealed from these proceedings to Mr. Walpole, an officer described as the Commissioner of Calcutta, under the provisions of Regulation III of 1828. They admitted that the lands in dispute were within the limits of the Soonderbun jungles, but set up their title under the pottah of 1805. The proceeding of Mr. Walpole of the 24th August 1830 states that Mr. Dampier, on being referred to for explanation, had stated that at the date of proceeding no original pottah had been produced; but that on inquiry it appeared that such a pottah had been granted, and that accordingly Government withdrew its claim. The order was that the lands included within the pottah be, as before, in the possession of the declarants under the conditions therein mentioned. But no attempt seems then to have been made to ascertain precisely what lands were included in the pottah.

At that time, therefore, it seems to have been admitted on both sides that the lands in dispute were within the limits of the Soonderbuns; that the plaintiffs, under the pottah granted in 1805, were entitled to hold, at the fixed rent of 349 sicca rupees, some lands within those limits, and that the only question between the parties as to any particular lands in dispute was whether they were within the boundaries defined by the pottah.

It would appear, however, that proceedings had in the meantime been commenced under Regulation II of 1819 for the assessment of Aelateerkhallee, pursuant to Mr. Dampier's first order; for, by a proceeding of the 19th August 1831, Mr. Dampier, as Commissioner of the Soonderbuns, formally dismissed such a suit. And his proceeding was afterwards confirmed by the Commissioner of the Division, Mr. Barwell, on the 31st January 1833.

The subsequent proceedings before the Revenue authorities, though very voluminous and extending over many years, seem to their Lordships to require but brief notice.

The position of the parties remained as the abovementioned proceedings before Mr. Dampier had left it until 1843. In that year Mr. Sturt,

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the Collector of Backergunge, being on an official tour through this part of the Soonderbuns, observed the extension of cultivation in parts of the land in dispute, and, conceiving that it was liable to assessment for Government revenue, caused the map of it, which in the argument has been called "Sturt's Map," to be made. That map divides the whole land in dispute into the following portions or chucks, namely:—No. 1, being Phooljhooree; No. 2, called Kewraboonia; No. 3, called Aelateerkhallee; No. 4, called Boorissur; No. 5, called Burgonah; No. 6, called Dhullooah; and No. 7, Nultollah. He seems to have intended to institute seven separate suits for the resumption of these seven chucks; but his hand was stayed by an order of the Commissioner of the Division, Mr. Dunbar, of the 16th September 1845, which directed him to refrain from instituting any claim for the assessment of revenue on any lands within the boundaries recorded in the pottah, but left him free to sue in respect of land beyond those boundaries. No suit, however, was then brought.

In January 1846, the office of Commissioner of the Soonderbuns, which for a time had been suppressed, was revived; and in 1849 proceedings embracing all the seven chucks were pending before Roy Omacaunt Sein, the then Commissioner of the Soonderbuns, for ascertaining the extent of land beyond the pottah granted by Government on the 17th April 1805, and for the assessment of revenue thereon. By his proceeding, dated the 6th May 1849, the last-named Commissioner ruled that, although the Talookdars had by means of cunning improperly appropriated and taken possession of some land belonging to Government on the plea of their pottah, but which was unconnected with, and beyond, the boundaries recorded in the pottah; the question before him was, nevertheless, concluded by the proceedings before Mr. Dampier, and he accordingly struck the case off the file. This decision was brought by appeal before Mr. Mills, who, as one of the Judges of the Sudr Dewanny Adalut, had special jurisdiction, as the ultimate Court of Appeal, over the awards of the Revenue officers in resumption cases; and he, by an order dated the 17th December 1851, reversed it, and remitted the case for trial, on the questions whether the lands in dispute were within the boundaries mentioned in the pottah, or were included in the decision of Mr. Dampier.

The case so remanded was tried first by Mr. Deputy-Collector Smith and afterwards came on appeal before Mr. Grote, as Commissioner. The result was that chuck No. 1, being Phooljhooree, was permanently released from the claim of Government, being found to be within the pottah boundaries, and, as such, to have been released by Mr. Dampier; that chucks Nos. 5, 6, and 7 were resumed as being beyond the pottah boundaries; and that chucks Nos. 2, 3, and 4 were reserved for further consideration by the Commissioner, who directed another survey map to be prepared of them. Mr. Grote's order bore date the 25th July 1856.

On the 11th May 1857 the plaintiffs commenced the regular suit out of which the first of these appeals arises. Its object was to set aside the Commissioner's order of the 25th July 1856, and for the maintenance as theretofore of the plaintiffs' title and possession as Talookdars over the three chucks described as Nos. 5, 6, and 7, containing about 80,000 beegahs in the village of Aelateerkhallee.

Of the issues settled in the suit it is necessary to notice only two, namely:—

1*st*.—Are the lands claimed within the limits of the pottah of the 17th April 1805, or not?

2*ndly*, (and this is an additional issue framed at a later period by the Judge).—Did Mr. Dampier, the Commissioner of the Soonderbuns, include the land in dispute within the scope of his inquiries? Did he release the disputed lands, and were his orders confirmed by the Special Commissioner? And is the land in dispute beyond the scope of the inquiries instituted by Mr. Dampier, the former Commissioner of the Soonderbuns.

Mr. Kemp, the Judge of Zillah Backergunge, found both these issues in favour of the defendant, and dismissed the suit. His judgment was confirmed on appeal by the High Court of Calcutta on the 11th May 1863, and the first appeal, of which it will be convenient now to dispose, is against those two decrees.

On the additional issue it is not necessary to say much. Mr. Dampier never professed by his proceedings to determine the precise limits of the grant; and their Lordships concur with the Judges of both the Courts below in thinking that there is no evidence that Mr. Dampier visited or surveyed the land comprised in the three chucks which was the subject of this suit, (all of which lie to the south of the Khagdoon), or passed, as intended to pass, any order concerning them. Indeed, although the appellant's printed case contains a good deal of matter on this point, little was said at their Lordships' bar concerning this issue. The strength of the argument on both sides was directed to the other, and more material question, whether the three chucks are, in point of fact, within the boundaries defined by the pottah.

It has very properly been admitted by all the Judges who have tried these cases in the Civil Courts that, if those boundaries can be identified, the plaintiffs are entitled to whatever area is contained within them. If the grant was an imprudent one, the present Government of India must bear the burden of its predecessor's imprudence. On the other hand, if it be uncertain on the evidence which of

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two lines was the boundary contemplated by the parties to the instrument, the improbability of a grant of 1,40,000 beegahs at a fixed perpetual rent of 349 sicca rupees may afford an argument for the preference of one line to the other.

The three chucks which are the subject of the first suit form an irregular quadrilateral, of which the actual boundaries are the following :—the northerly boundary is the Khagdoon, between its junction with the Bheeskhally river and the mouth of the Burgoonah Khal, which connects the Khagdoon with the Boorissur; the easterly boundary is partly the last-mentioned Khal and partly the course of the Boorissur river to its mouth; and the westerly boundary is the Bheeskhally, from its junction with the Khagdoon to its mouth. But neither the course of the Boorissur nor that of the Bheeskhally is due north and south; the former river trends somewhat to the west, and the latter to the east. And there is a space between their mouths at which the southerly or south-westerly boundary of the quadrilateral is the sea or the estuary of the Horringhotta, into which both the Boorissur and the Bheeskhally fall.

How, then, is the land thus surrounded to be brought within the boundaries of Aelateerkhallee as defined by the pottah ?

The contention of the plaintiffs is this: they say that the northern boundary of Aelateerkhallee, treated as consisting of chucks Nos. 2, 3, 4, 5, 6, and 7, is, as defined by the pottah, the Aeladoon; that the eastern boundary is also the Aela; that the term used by the pottah to define the western boundary, namely, "the ebb of the Bhyong river as far as the Khagdoon," means the ebb of the Bhyong river, through what is marked on the maps as the Khagdoon, and thence through the river Bheeskhally to the sea; and that the southern boundary of the six chucks is the Purwah river mentioned in the pottah as the southern boundary of the Mouzah.

The northern boundary is not in question in this suit. The eastern, as contended for by the plaintiffs, involves this difficulty. The same stream is treated as being in one part of its course the Aela, in another the Boorissur or Purwah. Their Lordships accept, as the Courts below have accepted, the hypothesis that the "Purwah" of the pottah and the Boorissur of the maps are the same. But, although there is no conclusive evidence on either side which shows at what precise spot the Aela becomes the Purwah or Boorissur, it seems clear that the stream ceases to bear the name of Aela long before it reaches any part of the land in dispute in this first suit. And the general course of the Purwah, if not due north and south, is far more in that direction than it is from east to west; and, if it does not form the eastern boundary of the three chucks in dispute, it is impossible to say what that eastern boundary is.

Again, the contention of the plaintiffs as to the western boundary involves still greater difficulties. The admitted boundaries of Phooljhooree show that, at the date of the pottah, the Khagdoon and the Bheeskhally were known as two distinct streams, the latter being a considerable river flowing from north to south, the former flowing first from north to south parallel with the Bheeskhally, and there forming the eastern boundary of Phooljhooree, and afterwards from east to west and so forming the southern boundary of Phooljhooree. If it be said that after their junction the united streams may take the name of the less considerable confluent, the Khagdoon, the answer is that that theory is contradicted by every map of authority from that of Rennell's downwards. Again, if it be conceded, for the sake of argument, though that is a material question to be considered on the second appeal, that the branch of the Khagdoon, which is stated in the pottah to be the eastern boundary of Phooljhooree, is identical with "the river Bhyong as far as the Khagdoon" in the Persian document, or "the ebb of the Bhyong as far as the Khagdoon" in the Bengalee document, by what reasonable construction can either phrase, and especially the first, which is that found in the original pottah, be interpreted to mean the reflux of the Bhyong through the Khagdoon and the Bheeskhally, or through either of them to the sea ? The words "as far as" seem to import that the Khagdoon, wherever that name was to be applied to the stream, was the *terminus ad quem*, the point beyond which the western boundary was not to extend. It is, therefore, difficult to see by what construction either the eastern or the western boundary, as laid down in the pottah, can be extended so as to comprehend within Mouzah Aelateerkhallee any portion of the three chucks in dispute in this first suit. The argument, however, of the plaintiffs is this :—the southern boundary is clearly defined to be the river Purwah. We must start from that boundary and proceed to the northern boundary, the Aeladoon. Whatever lies between the two must belong to the Mouzah, and the western and eastern boundaries must be prolonged accordingly. The argument would be more plausible if the river Purwah could be shown to be the complete southern boundary of the disputed lands. But it has been seen that during the greater part of its course it is the easterly rather than the southerly boundary of the land in dispute, and that, although at its mouth it may trend more to the westward and so overlap the southern end of a portion of that land, there is a definite space between the

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mouths of the Purwah and the Bheeskhally, at which the land forming the southern and south-western extremities of the disputed chucks is washed by the estuary of the Horringhotta. That space Mr. Reilly, the Commissioner, somewhere states to be from four to five miles in length, and by measurement on any map laid down to scale it will be seen that his estimate is not greatly beside the mark. It follows, then, that the plaintiffs have failed to identify three out of four of the pottah boundaries, (being the only boundaries which could touch the land in question,) so as to comprehend any portion of chucks Nos. 5, 6, and 7. This consideration would alone suffice to justify the dismissal of the first suit. But it is, of course, desirable to have on the other side some theory which may account for the definition of the southern boundary of the Mouzah as the river Purwah. Their Lordships are unable to suggest any one more plausible than that of Mr. Justice Campbell, which makes the Purwah a partial boundary to the south at the point at which it makes a marked trending to the westward, and at which its existence as such boundary is in some degree consistent with the lateral boundaries. The result is that their Lordships are unable to see any grounds for overruling the concurrent judgment of the two Courts below in the first suit.

They will now proceed to consider the second appeal.

The question touching the three chucks which was reserved for further consideration by Mr. Grote came in the first instance before Mr. Reilly, the then Commissioner of the Soonderbuns. He, in his proceeding of the 6th December 1860, seems to have come to the conclusion that the plaintiffs had not established a title according to the pottah boundaries to any land whatever except that comprised in Mouzah Phooljhooree, their title to which had been recognized by every Government officer who had to do with the case. He, therefore, affirmed the strict right of Government to resume all the three chucks under consideration; but recommended that, inasmuch as the boundaries of one of them corresponded on two sides with the pottah boundaries, that should be released as a matter of favour. The chuck in question is inaccurately described in his judgment as No. 2, and in Mr. Gomes' map is inaccurately laid down as Kewraboonia. It is obvious, however, that the chuck of which Mr. Reilly meant to recommend the release, and which has since been released, is No. 3, or the Aelateerkhallee of Mr. Sturt's map. Mr. Lushington, the Commissioner of the Nuddea Division, by his order of the 10th April 1861 set this mistake right, but in all other respects confirmed Mr. Reilly's order. The final result, therefore, of these proceedings before the Revenue authorities was that chuck No. 3 was released, and that chucks Nos. 2 and 4 were also resumed.

To impeach these proceedings the plaintiffs commenced the regular suit, out of which this second appeal arises, in the Civil Court.

The material issues were, as in the former suit—

1. Are the lands claimed within the limits of the pottah of 1805?

2. Were these chucks resumed under Regulations II of 1819 and III of 1828, and finally released to the plaintiffs?

Both these issues were decided against the plaintiffs, and their suit dismissed with costs by the Zillah Judge, Mr. Buckle, on the 24th December 1863. But his judgment was reversed on appeal, and the plaintiffs' title to the two chucks in question upheld by the High Court on the 20th March 1865. And against this latter decision the second appeal has been preferred.

Upon the second issue the High Court agreed with the Zillah Court, and their Lordships do not dissent from that finding. They think it impossible to say that all the lands in question in this suit were formally released by Mr. Dampier as falling within the pottah boundaries. It does not appear that the greater part of them was ever surveyed by him or under his direction, or that he ever purported to decide what was included in the pottah boundaries. His order of dismissal and release, therefore, cannot operate as a bar to the trial of the first issue, though, as will hereafter be pointed out, the proceedings before him may afford some inferences not immaterial to its determination.

The first issue in this suit raises questions of greater difficulty than those presented by the like issue in the other suit, because it is necessary in this suit to fix affirmatively three boundaries, to the definition whereof contained in the pottah nothing in nature exactly corresponds. It is, in their Lordships' opinion, impossible to evade this difficulty by adopting the extreme view of Mr. Reilly, and saying that, inasmuch as the plaintiffs have failed to identify three of the pottah boundaries of Aelateerkhallee satisfactorily, it must be taken that nothing was effectually granted by the pottah except Mouzah Phooljhooree. The pottah purports to grant both Mouzahs, and the Government cannot be allowed to say that their grant which purports to grant something has in fact granted nothing, if by any reasonable construction it is possible to fix boundaries which shall define the second Mouzah.

What, then, are the boundaries of Mouzah Aelateerkhallee? As to the northern boundary, there is no difficulty. All the maps show that the water which forms that boundary,

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whether it be measured from its junction with that branch of the Khagdoon, which is the admitted western boundary of Pooljhooree, or from the point at which the Kewraboonia Khal leaves it (in other words, whether the Mouzah does or does not include chuck No. 2), may be correctly described as the Aeladoon. That the same stream takes a southerly turn, and, to some extent at least, forms in the strictest sense the eastern boundary of the Mouzah, is also clear. The difficulty as to the eastern boundary is this. It is admitted that at some point of its course (the defendant says at its confluence with the Badoora) the river loses the name of Aela and becomes the Borissur or Purwah, and consequently that, if the eastern boundary be prolonged beyond that point, it will no longer correspond with the pottah boundary.

Their Lordships, however, have to deal with the whole description in the pottah, and they are of opinion that, if they can determine at what point the Purwah can be held to form, as stated by the pottah, wholly or in part the southern boundary, the prolongation of the eastern boundary beyond the point at which the river is in strictness called the Aela becomes a circumstance of comparatively little importance, and one which the laxity with which the names of all these streams are used would suffice to explain. The learned counsel for the defendants were themselves not indisposed to accept Mr. Justice Campbell's theory as to the southern boundary. But they would place the bend of the river from which the southern boundary line is to be drawn nearly opposite to the mouth of the Badoora, the point at which it is said the Aela first becomes the Purwah. To their Lordships it appears that the well-defined trending of the river to the westward, which may reasonably be treated as the southern boundary in the contemplation of the parties, is considerably to the south of that point, and almost at the bottom of chuck No. 4. Again, it is necessary to connect the river Purwah, from the point at which it ceases to form the southern boundary, with the proper western boundary. And this their Lordships think is more reasonably done by taking the Burgonah Khal as the connecting link than by drawing an arbitrary line through the jungle. In the former case, the southern boundary (speaking roughly) of the Mouzah will throughout be the Purwah, or water issuing from, or communicating with, the Purwah. Their Lordships are, therefore, of opinion that the northern, eastern, and southern boundaries, as found by the High Court, may be accepted as the least inconsistent with the language of the pottah that are capable of being assigned. The chief difficulty in the case is that of the western boundary. We have to determine what is meant by "the river Bhyong as far as the Khagdoon," or "the ebb of the Bhyong as far as the Khagdoon." The Bhyong, so far as it has been identified, seems to be another name for the Mirzagunj, a considerable stream which, having probably by its deposits formed, or largely contributed to form, the land in dispute, divides itself at this point of the Delta into at least two branches, a part of its water finding its way westward through the Aeladoon to the Khagdoon, and the other part flowing eastward through the Aeladoon to the Boorissur. The High Court has identified the boundary under consideration with the branch of the Khagdoon, which is admitted to be the eastern boundary of Phooljhooree. The defendant contends that, if this boundary is capable of identification at all, it must be taken to be the Kewraboonia Khal, which, starting from one point of the northern part of the Aela, meets the southern branch of the Khagdoon.

It is impossible to deny that there is very great force in the arguments which have been adduced against the theory of the High Court. It is in the highest degree improbable that the same water should in the same document have been described as "the Khagdoon" and as "the Bhyong," or "ebb of the Bhyong as far as the Khagdoon." But unless this singular laxity of expression is assumed, the Bhyong or its ebb must be held to reach the Khagdoon at the extreme north-western corner of the Mouzah, and, therefore, in no sense to form its western boundary. Again, it seems probable that if the two Mouzahs granted had been known to be conterminous, they would have been so described. Against the theory that the Kewraboonia Khal is the western boundary, the learned Judges of the High Court have assigned various reasons, none of which seem to their Lordships to be conclusive.

If Gomes' map be examined, it will be seen that, starting from the point at which the Burgonah Khal joins the Khagdoon, following the Khagdoon to the mouth of Kewraboonia Khal, and thence following that Khal to its junction with the Aeladoon, we have a boundary line which might be accepted as the western boundary with little more laxity of description than has been admitted in the fixation of the eastern and southern boundaries. If, therefore, the case rested here, their Lordships might be disposed to think that, although neither theory is altogether satisfactory, that of the defendant is the more plausible of the two. They are, however, pressed by this consideration. If this boundary line be adopted, it would, if taken in conection with the other boundaries, give to the plaintiffs chuck No. 4, but it would wholly exclude them from chuck No. 2. It is, however, perfectly clear that Mr. Dampier, by his order of the 19th August 1831, released some part of the Mouzah Aelateerkhallee "as included within the boundaries mentioned in the pottah,"

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being that portion of which he contemplated the resumption by his proceeding of the 12th March 1830. And, looking at the latter proceeding and at Captain Hodges' map, their Lordships are strongly of opinion that Mr. Dampier's investigation and subsequent release probably comprehended the whole northern border of what is now claimed as Mouzah Aelateerkhallee, from the junction of the Aela with the Khagdoon, and certainly comprehended the village or haut which in most of the maps appears as "Aela" on the west of the Kewraboonia Khal. If this be so, there arises a presumption against the theory that the Kewraboonia Khal was the western boundary contemplated by the pottah, which, in their Lordships' judgment, is sufficient to turn the scale in favour of the other theory. And, on the whole, their Lordships have come to the conclusion that, inasmuch as they are unable to assign any boundaries to the Mouzah which will more nearly correspond to the description in the pottah than those found by the High Court, the second decision of that Court ought also to be affirmed.

Something was said at their Lordships' bar touching the hardship which the plaintiffs have sustained by their exclusion from the three southern chucks, upon which it was represented they had expended large sums in reclamation of waste land. Their Lordships have to observe that the only question in issue in these suits was whether the plaintiffs were entitled to hold as against the Government, at a perpetual rent, almost nominal, the large quantity of land which they alleged to be comprehended within the pottah boundaries. That was a question of strict legal right on each side. There is nothing in the present decision which need prevent the Government from taking into consideration in the assessment of revenue upon the resumed chucks whatever equities may arise from such an expenditure as that suggested, or from giving effect to any preferential right to a settlement which may ordinarily be allowed to the persons found in the occupation of such lands. Their Lordships entertain the hope that any claim of that kind which the plaintiffs may prefer will receive full and fair consideration. To such consideration they seem the more entitled, inasmuch as they are not mere squatters or trespassers on the lands; but have held them under a claim of [illegible] which, if not altogether reasonable, [illegible]not be said to have been put forward *malâ* [illegible] and which was made more colourable by [illegible] somewhat intermittent action of the [illegible] authorities during a long period of [illegible]. This question, however, is wholly beside [illegible] which their Lordships have to decide. [illegible] order which they can recommend [illegible] to make is that both these appeals [illegible] with costs.

OFFICIAL PAPERS.

Revision of Assessment in Salem.

Proceedings of the Madras Government, Revenue Department, 20*th May* 1868.

Read Proceedings of Board of Revenue, 4th October 1867, No. 6,334:—

Order thereon, 20th May 1868, No. 1,427.

The Government proceed to pass orders on the proposals for the revision of the Salem Land Assessment, which are submitted in the above Proceedings of the Board of Revenue and in the papers that accompany them.

2. The Government deem it unnecessary to analyse minutely the principles on which the re-assessment has been conducted, as these are in conformity with the general instructions prescribed by Government. They will, however, briefly notice the main points of the process followed in this particular district.

3. The first report relates to the Southern taluks or Talghat division. The second to the Baramahal or intermediate tract, and the Balaghat or most northern and elevated tract.

4. In the former the increase in the area discovered by survey averages 12 per cent., and in the latter 16 per cent; the actual increase in the former being 81,594 acres, and in the latter 68,840 acres.

These areas do not include Inam or Poramboke lands.

5. The classified area is 15,08,642 acres, and of this

82	per cent.	is red soil.
16	„	is regur.
2	„	is exceptional or permanently improved.

6. The standard crops are—

White Paddy throughout the district.	For wet lands.
Cholum, Cumboo, and Ragi in southern division. Cumboo, Ragi, and Horse Gram in northern division.	For dry lands.

7. The grain values for the different sorts of soil have been determined partly by experiment, but mainly by general inquiry, and by the aid of intelligent ryots and experienced Revenue officers.

At paragraphs 7 and 8 of Mr. Master's two reports there are given tables to shew these values for Salem, in contrast with those adopted for other districts by the department.

8. To cover risk of season, an allowance of 15 per cent. in the southern and 20 per cent. in the northern divisions (this last rate corresponding with that allowed in Trichinopoly) has been made from the estimated gross produce of dry lands.

No similar allowance is proposed for wet lands, the grouping of villages with reference to the character of the irrigation, and their consequent rating at, or above, or below, the standard rates of assessment, being held to be sufficient to cover this risk.

9. The commutation rates are deduced from the whole series of available Price Lists, ranging from Fusly 1231 (A. D. 1821-22) to Fusly 1274 (A. D. 1864-65), a period of forty-three years.

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The averages are shewn below according to the district records, the Board's records, and the proposals of Messrs. Puckle and Thomas (who commenced the revision).

The rates that were adopted in the case of the adjoining district of Trichinopoly are also noted:—

Per "Harris Cullum."

In ryots' selling months, February and March.	Paddy.	Ragi.	Cumboo.	Cholum.	Gram.
Southern Taluks, Annas.	13	14	15	16	0
Northern do. „	11	11	11	0	14
According to Lists in Board's records, dated Fusly 1218 to Fusly 1274	12⅓	12¼	12¼	13⅚	0
Mr. Puckle's rate for all grains after deducting allowance for cartage and brokerage.	For all grains. Annas.				
Southern Taluks ...	10				
Northern do. ...	9				
	Paddy.		Dry grains.		
Mr. Thomas's rate for the whole district ...	9		10		
Rates adopted in Trichinopoly...	8	10	10	12	0

10. The cultivation expenses calculated in the usual manner come out—

Southern Taluks...	Wet land, Rupees	9	4	0
	Dry land, „	4	12	0
Northern do. ...	Wet land, „	9	0	0
	Dry land, „	3	12	0

per acre of good soil, well cultivated, the expenditure being proportionately reduced on the inferior soils.

11. The straw is said to pay all the costs of ploughing, instead of only the cattle's keep, as generally allowed.

12. An allowance of 10 per cent. is made out of the money value of half the net produce on account of "unprofitable areas" included in the Survey fields, as hedges, banks, rocks, &c.

This allowance is usual, and Mr. Puckle says it is specially necessary in Salem District, and is no more than the actual necessities of the case require.

13. The standard money rates of assessment arrived at by the above detailed process approximate as nearly as possible to a moiety of the net produce.

14. They are modified by the grouping of the villages with reference to the character of the irrigation in the wet lands, and to the relative advantages of climate, situation, proximity to markets, &c., in the case of the dry lands.

15. Four groups have been formed for wet lands in the Southern taluks, and the same number for the Northern, the first of the latter corresponding with the second of the former, which second group is assessed at the standard rates, which are raised for the first group and lowered for the third, fourth, and fifth.

16. Three groups have been formed for the dry lands, of which the first bears the standard rates.

17. The ultimately resulting merged money rates per acre are shewn below:—

Northern Taluks.

Taram. No.	Dry. RS.	Dry. A.	Dry. P.	Wet. RS.	Wet. A.	Wet. P.
1	3	8	0	8	0	0
2	2	8	0	7	0	0
3	2	0	0	6	0	0
4	1	8	0	5	0	0
5	1	4	0	4	0	0
6	1	0	0	3	0	0
7	0	12	0	2	8	0
8	0	8	0	2	0	0
9	0	6	0	1	8	0
10	0	5	0	1	4	0
11	0	4	0	1	0	0

Southern Taluks.

Taram. No.	Dry. RS.	Dry. A.	Dry. P.	Wet. RS.	Wet. A.	Wet. P.
1	4	8	0	9	0	0
2	3	8	0	8	0	0
3	2	8	0	7	0	0
4	2	0	0	6	0	0
5	1	8	0	5	0	0
6	1	4	0	4	0	0
7	1	0	0	3	0	0
8	0	12	0	2	8	0
9	0	8	0	2	0	0
10	0	6	0	1	8	0
11	0	4	0	1	0	0

Occupied Areas under each rate in Fusly 1274.

Wet Land.

Rate. RS.	A.	P.	Extent. Acres.	Assessment. RS.	Percentage.
9	0	0	336	3,024	...
8	0	0	652	5,216	1
7	0	0	2,597	18,176	3
6	0	0	7,692	46,155	9
5	0	0	17,787	88,939	21
4	0	0	27,385	1,09,540	33
3	0	0	19,213	57,640	23
2	8	0	3,360	8,397	4
2	0	0	996	1,991	1
1	8	0	511	765	1
1	4	0	3,489	4,362	4
1	0	0	61	61	0
Total...			84,079	3,44,266	100

Dry Land.

Rate. RS.	A.	P.	Extent. Acres.	Assessment. RS.	Percentage.
4	8	0	1,811	8,150	...
3	8	0	6,247	21,863	1
2	8	0	9,659	24,147	1
2	0	0	22,885	45,768	3
1	8	0	93,236	1,39,855	10
1	4	0	1,94,502	2,43,127	20
1	0	0	2,60,201	2,60,201	27
0	12	0	1,74,041	1,30,530	18
0	8	0	80,197	40,999	8
0	6	0	65,149	24,431	7
0	5	0	200	63	0
0	4	0	48,660	12,163	5
Total...			9,56,788	9,50,397	100

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		Extent.	Assessment.
		Acres.	RS.
Dry land	...	9,56,788	9,50,397
Wet do.	...	84,079	3,44,266
		10,40,867	12,94,663

18. The *unoccupied* but classified and rated area measures 4,67,775 acres, assessed at Rupees 2,98,468, which may be considered the margin for future extension of revenue.

Mr. Puckle's proposals.

	RS.
Single crop assessment on area classified in Fusly 1270	12,94,663
Do. on extension of cultivation to Fusly 1274	80,449
Total...	13,75,112
Add—village cess on above, at 6¼ per cent.	85,944
Second crop assessment, estimated. ...	45,449
Grand Total...	15,06,505
Deduct deficiency in village cess ...	18,890
Net result...	14,87,615
Net settlement of Fusly 1274	16,01,628
Mr. Puckle's net results	14,87,615
Difference...	1,14,013

19. The ultimate results of Mr. Puckle's proposals are differently stated by himself at paragraph 40 of his letter dated 13th April 1866, by Mr. Master at paragraph 28 of his letter dated 29th August 1866, and by the Board at paragraph 11 of their Proceedings above recorded, and none of the calculations appear to be quite accurate according to the *data* used.

20. The following appears to Government to represent the effect of the proposals as compared with the Settlement of Fusly 1274 :—

	RS.
Actual settlement of Fusly 1274 ...	17,06,462
Deduct payments out of collections to village servants	1,04,834
Net settlement	16,01,628
Mr. Puckle's do.	15,06,505
Difference...	95,123
Add deficiency of village cess to meet village charges	18,890
	1,14,013

21. Thus, had Mr. Puckle's proposals been applied at the ordinary settlement of Fusly 1274, there would have been a reduction of Rupees 1,14,013 out of the net Settlement actually made, namely, Rupees 16,01,628, or 7 per cent.

22. The deficiency, as calculated above, is considerably less than what is shewn by Messrs. Puckle or Master or by the Board, but it still appears to Government to be an unnecessary sacrifice out of a revenue demand which is avowedly paid with ease, although it may include many inequalities.

23. It may safely be assumed that the percentage of loss represents sufficiently accurately what would be the effect at the present time of carrying out the revision of the assessment on the proposed rates, and Messrs. Puckle and Master, recognizing the fact that the existing demand is met with ease in ordinary seasons, and that on a general view relief cannot be said to be needed, recommend that the revision be left in abeyance.

24. The Board are opposed to any postponement, and the Government agree with them in thinking that it would be most unwise to abandon the results of the labour and inquiry that have been devoted to the survey and revision of the assessment, and so to lose the opportunity for settling the Government demand on a more discriminating and equitable basis than it at present occupies.

25. But while resolving to avail themselves of the full and valuable information that has been collected to ensure a more fair distribution of the Government demand on the land, the Government see no reason why they should accept the whole of Mr. Puckle's proposals, involving, as they do, a considerable sacrifice of public revenue which at present is paid with perfect ease.

26. The demands on the Government for the improvements of the public establishments, for State education, for sanitary and social improvements, for reproductive public works, and generally for aid to the development of the country and its advance on the path of progress, preclude the Government in the interest of the community from relinquishing any portion of the existing revenues which can fairly be retained.

27. The key to the financial results of the proposed revision is, of course, the commutation rate adopted for the conversion of the Government share of the produce into money, and this, as above pointed out, has been deduced from the Price Lists for a period of forty-three years, from A. D. 1821-22 to 1864-65, the effect being to lower the average materially by the inclusion of the prices prevailing in the earlier years of the series at rates far below those to which they are at all likely again to fall. The great development of trade, and the impetus given to prices by the extensive gold discoveries of the last twenty years, have produced effects, which there is no reason to suppose will be other than permanent, and under these circumstances it appears to Government unreasonable to base the commutation of the public demand on the land in any degree on facts deduced from a state of things which it is not at all probable will ever recur.

28. Holding these views, the Government called on the Officiating Director of Revenue Settlement for certain information to enable them to test the effect of basing the commutation rate on the returns for a shorter and more recent series of years, and an inspection of the statements furnished by him have confirmed them in their opinion that in the proposals submitted to them the commutation rate for the Government demand has been unduly lowered.

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29. Mr. Puckle has adopted two scales, for the Northern and Southern taluks respectively, and taking the higher of these rates and comparing it with the Price List for February and March (the Ryots' selling months) from Fusly 1245 to 1276, it is found that, as regards the four kinds of dry grain for which details are given, viz., Cholum, Cumboo, Ragi, and Horse Gram, the price has only in two instances out of ninety-six (viz., Cumboo in February, and Ragi in March, Fusly 1266) receded to a level with the proposed rate during the twelve years from Fusly 1265 to Fusly 1276, and that, as regards Paddy, there are also only two cases out of forty-eight (viz., second sort Paddy in February and March, Fusly 1266) in which it similarly receded, while the average of the twenty years, from Fusly 1255 to 1274, which excludes the two years 1865-66 and 1866-67, in which prices may be said to have risen to famine rates, gives the following result:—

	Mr. Puckle's average price per Garce. For 44 *years, from Fusly* 1231 *to* 1274.		*Average for* 20 *years, from Fusly* 1255 *to* 1274.
South Taluks...	Dry ... Rs.	120	Dry ... Rs. 137
	Wet... „	111	
North Taluks...	Dry... „	100	Wet... „ 123
	Wet... „	93	

30. Applying in detail the rates adjusted at the twenty years' average of prices, the following result is obtained:—

	RS.
Actual settlement of Fusly 1274 ...	17,06,462
Deduct payment by Government to village servants	1,04,834
Net Settlement...	16,01,628 A
Assessment on area classed in Fusly 1270 at rates based on 20 years' average for first crop	14,24,116
Village Service Cess, at 6¼ per cent. on do.	89,007
Assessment on estimated extension of cultivation to Fusly 1274 at rates as above	93,007
Village Service Cess on do.	5,815
Second-crop charge as calculated by Mr. Puckle	45,450
Total...	16,57,437
Deduct payment to village servants...	1,04,834
Net Settlement...	15,52,603 B
Difference between A and B	49,025

31. Thus, by adopting the average of twenty years from A. D. 1845-46 to 1864-65 inclusive, the results of the survey and revision of Settlement might be secured with a sacrifice of less than half a lac of rupees instead of Rupees 1,14,013 out of former revenue, or more exactly Rupees 49,025 out of Rupees 16,01,628, being about three instead of seven per cent.

32. The Government are willing to accept this loss of three per cent. of existing land revenue as the price of securing for the district the benefit of the expensive operations which have been carried out there, and the Board of Revenue will be requested to report, after communication with the Director of Revenue Settlement, whether they see any objection to the proposed modification, and to the adoption of the same series of years in fixing the commutation rate for the purposes of the revision in any other district which may be taken in hand. They will also submit their opinion as to the practicability of applying the proposal to any district in which the revision has been already carried out, as it is evident that the use of different series of years in different districts is fatal to the attainment of that relative equality of taxation, which it was one of the main objects of the revision to secure as nearly as possible.

33. The Government concur in opinion with the Board of Revenue that it is eminently desirable to commute the liability to perform customary labour on irrigation works into a money payment throughout the Presidency. The arrangement has been suggested on more than one occasion, and every year adds strength to the arguments in favour of it. The works are deteriorating, the difficulty of enforcing the customary liability is increasing, and the improved and improving state of the market for produce renders a money cess a far lighter burden on the holder of irrigated land than the demand for labour imposes.

34. It appears to the Government desirable to take powers by an Act to impose a cess for this purpose on all holders of land irrigated from a Government source at a rate not exceeding a fixed per-centage on the assessment on the land, and they desire that the Board will take the matter in hand at once, and, after communication with the several Collectors and with the Director of Revenue Settlement, submit a draft of an Act to attain the object in view, with their remarks as to the rate to be adopted and the probable financial result of the measure.

NOTE.—Paragraph 2 of Board's Proceedings, No. 4,540, dated 18th July 1867, shews that the subject has already engaged their attention.

35. In connection with the question of the Salem revision, the Government have had under consideration the advisability of restoring the Department of Revenue Settlement to the position in regard to the general revision of the land assessment which it occupied prior to the passing of the orders of 12th December 1864, No. 2,243, resolving to entrust the duty to the Collectors of the districts concerned, except, in a few specified cases.

36. The experience which the Government have had of the working of this altered system has been very unsatisfactory, and convinces them that the retention of the special department for the performance of this special duty is the only method by which to ensure celerity and efficiency in its discharge, consistency and uniformity in the details of the re-assessment, and a fair measure of relative equality in the resulting taxation, as well as to save the country from the neglect which must occur if the Collector and subordinate Revenue officers are withdrawn from their ordinary duties and employed on this intricate, laborious, and absorbing task.

37. In accordance with these views the Government have resolved to re-assign to the Director of Revenue Settlement the supervision of the re-assessment of the land revenue in all those districts which have yet to be undertaken, except Tinnevelly, the revision of which district has already been for

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some time in hand under a specially qualified officer in the Collector, Mr. Puckle.

38. The Government have already gazetted Mr. Master to the confirmed post of Director of Revenue Settlement, and they now authorize him to draw pay at the rate of Rupees 2,750 monthly, from the date on which he was so gazetted.

39. The full rate of pay (Rupees 3,016-10-8) sanctioned by the Supreme Government for the appointment was fixed with reference to the probability of securing for the duty the services of one of the then members of the Board of Revenue, and the Government consider that the reduced rate now adopted affords sufficient remuneration for the duties, onerous and responsible though they be, and will enable the Government at all times to select a duly qualified officer for the post from the higher ranks of the service.

40. The Government desire that Mr. Master will consider and report what arrangements it is desirable to make for re-establishing the department on an effective footing for the performance of the duty now delegated to it. It is observed that it at present includes no member of the Covenanted service except the Director.

41. One important point connected with the revision of the assessment is the duration of the money settlement imposed in accordance with it, and on this subject there appears to be considerable uncertainty and difference of opinion.

42. It is a matter which there ought to be no room for doubt, and the Government accordingly resolve to bring the point under the consideration of the Secretary of State, in view to its early and final decision.

(Signed) W. HUDLESTON,
Secretary to Government.

REVENUE DEPARTMENT.

No. 6.

To the Right Honorable
the Secretary of State for India.

Right Honorable Sir,

We have recently had under consideration the proposals of the Director of Revenue Settlement and Board of Revenue for the revision of the assessment of the Salem District.

2. A copy of our Proceedings on the subject is enclosed. You will observe from these Proceedings that while we have deemed it necessary to refer the papers back to the Board of Revenue for their opinion on a point of detail, two important questions connected with the duration of the revised assessment now being carried out have been raised, and on these points we think it right to apply to you for further orders.

Proceedings of Government,
20th May 1868, Nos. 502—509.
„ 26th „ „ „ 588, 589.
„ 8th July „ „ 143A, 143B.

3. In the Minutes of Consultation, No. 951, dated 14th August 1855, discussing the proposals for a general Revenue Survey and Settlement of the Madras Presidency, the Government of the day expressed their opinion (paragraph 23) that it was undesirable that the *grain* assessments should be fixed in perpetuity, but that they should be declared unalterable for a period of 50 years.

4. At paragraph 21 of the same Proceedings, the Government proposed that the commuted money rates should vary with the rateable money value of the standard crop, but that, as frequent changes would be inexpedient, the prices should be fixed every seven or ten years on the average of the same period, and that the commutation rate so determined should remain unchanged for a term of the same length.

5. The Honorable Court of Directors, in their Despatch, No. 17, of 1856, dated 17th December, observe on this point at paragraph 22, "We entertain great doubt of the expediency of these proceedings. We think that the rates as we propose them to be assessed should be sufficiently moderate to allow for all ordinary fluctuation in the prices of grain, and that all needlessly frequent alterations in the amount of the ryots' payments should be avoided. The grain assessment having been determined and converted into money at a fair and moderate rate, we should perfer that the assessment so fixed should be declared unalterable for a term of thirty years, (as in Bombay and the North-Western Provinces,) at the expiration of which period *both the amount of the grain assessment and the rate of its conversion into money* would be subject to re-adjustment, according to existing circumstances."

6. On receipt of the Court's Despatch, this among other moot points was referred for the opinion of the Board of Revenue, who at paragraph 12 of their Proceedings, dated 15th July 1857, urged the adoption of the plan approved by the Court, and that the assessment when once fixed should be unalterable for thirty years. They again briefly alluded to the subject in paragraph 40 of their Proceedings, dated 19th November 1857, No. 4,044, observing that, when revision took place, the Government will, of course, be prepared to raise as well as decrease the assessment, in disposing of which Proceedings, the Government in paragraph 23, Extract Minutes of Consultation, No. 191, dated 15th February 1858, stated their opinion that it would be unwise to fix any definite periods for a review of the commutation rate, and observed that the question was one of vital importance to the land-owners, and should at all times engage the most careful attention of the Board. At paragraph 38 of the same Minutes of Consultation they desired that it should be distinctly notified that the assessment will be revised after fifty years, if then deemed expedient. It does not appear that any notification to this effect has ever yet been made.

7. These papers were in ordinary course transmitted to the Secretary of State, and acknowledged in his Despatch, No. 5, dated 15th December 1858, at paragraph 18 of which Lord Stanley stated his opinion on the question of periodical revisions to be "that frequent changes in the commutation price, and consequently in the money rate of assessment, should be avoided, and that if the demand is fixed on a basis sufficiently moderate to allow for ordinary fluctuations in price * * *, the time of settlement should be, as in Bombay, 30 years."

8. Here the discussion for the time terminated, and it should be noted that up to this stage the necessity of periodical revisions of the commutation price for the Government assessment in grain had been urged mainly with reference to the probability that a fall in prices might render the money rates oppressively high, although the possibility of a rise in price was also contemplated.

9. The question of the duration of the settlement of the Land Revenue demand was again

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brought under consideration in October 1861, when the Supreme Government forwarded copy of Colonel Baird Smith's final report on the Famine in Bengal, and requested the opinion of this Government as to the advantages of a permanent settlement for this Presidency, or as to the expediency of securing legislative sanction for settlements for terms of years.

10. Minutes were recorded on the subject by Sir W. Denison and the Hon'ble Messrs. Maltby and Morehead, for which we beg leave to refer you to the Proceedings of this Government, dated 8th Feb. 1862, No. 210; and in replying to the Supreme Government it was stated, in accordance with the views of the majority of the Government, that from an early date and for many years the Ryotwari Settlement had been expressly recognized as *permanent* in its nature, but that the orders above quoted on the subject of the revision of the assessment had left open the question of periodical revisions of the commutation rate.

NOTE.—Sir W. Denison was favourable to the imposition of a permanent grain rent, securing to Government the power of periodically determining the money value of such rent.
Messrs. Maltby and Morehead supported the principle of a permanent money assessment.

11. The Government expressed their decided objection to any extension of the Zemindari system of permanent settlement, which alienates from the State all waste land as a source of future additional revenue, and they saw no advantage in the proposed legislative sanction for settlements, for terms of years, which might hamper the Government without improving the condition of the ryot.

12. The subject of a permanent settlement was again brought under discussion by Sir C. Wood's Despatch of 9th July 1862, No. 14, to the Government of India, paragraphs 41 to 74.

13. It is therein observed that circumstances have a tendency to increase *the extent of cultivation* and the *value* of the wet *produce*, and that the Government may rightly claim to participate in those advantages which accrue from the general progress of society. The arguments in favour of a permanent settlement (defined as " the State fixing once and for ever the demand on the produce of the land, and foregoing all prospect of any future increase from that source,") based on considerations of the security and encouragement it would afford for the improvement of landed property, and of the closer link it would create between the Government and the people, and, on the other hand, those against the measure, as limiting the resources of Government from which to meet the constantly increasing demands for larger expenditure incident to improvements in the administration of the Government of the country, were stated and balanced, and the opinion of Her Majesty's Government was finally expressed that when " a full, fair, and equable rent" has been imposed on all lands now under temporary settlement, then " a permanent settlement may be safely applied" as " a measure dictated by sound policy and calculated to accelerate the development of the resources of India, and to ensure in the highest degree the welfare and contentment of Her Majesty's subjects in that country."

14. In regard to this Presidency in particular, it was remarked that the existing state of things might probably not admit of " a permanent settlement of the land revenue on the assessed lands at the existing rates," but that " as districts are gradually brought under the revised assessment, and when there is reason to believe that the land revenue has not only reached its probable limit but that it is equitably distributed over the lands affected by it, this restriction will no longer be needed." The ultimate conclusion was announced in paragraph 72, that " as regards all districts or parts of districts in which no considerable increase is to be expected in the land revenue, and where its equitable apportionment has already been, or may hereafter be, ascertained," there Her Majesty's Government will be ready to sanction " the settlement in perpetuity of the *assessment* at the present or the revised rates," on the recommendation of the Local and Supreme Governments.

15. With reference to this Despatch, the Supreme Government requested to be informed by this Government how far " the important measure of a permanent settlement of the land revenue" was applicable to this Presidency, and the question was referred to the Board of Revenue for report, but up to this time no reply has been received.

16. We confess we are not surprised at this hesitation, as it appears to us that a certain amount of ambiguity pervades the despatch of the Home Government, when it is attempted to apply its arguments and instructions to the state of things that exists here. There appears to us to be a want of distinction between the permanent settlement of the rates of assessment on particular areas under a " Field Settlement" system, and the permanent settlement of the land revenue from a village or estate or a number of villages or estates, which is fatal to a satisfactory reply to the question of the Supreme Government, inasmuch as the one allows and the other precludes future increase of revenue from extension of cultivation over the waste lands.

17. The definition of a permanent settlement, at paragraph 43 of the despatch, is not conclusive, for the words " the land" and " the source" may mean either a field, or an estate, or a village, or a taluk, or a district. The arguments for and against a permanent settlement may be indifferently applied to either view of the case, and with like force in kind, though perhaps not in degree. Sir T. Munro's recorded opinion, which is cited in support of the course adopted, certainly contemplated permanent rates of field assessment, and no relinquishment of the rights of Government in the waste. And in the passages above quoted, from paragraphs 50, 69, and 72 of the despatch, there is more than enough that is doubtful in the expression to warrant hesitation as to the applicability of the proposals of the Home Government to this Presidency.

18. We will first assume that it was intended to limit absolutely the maximum amount of the Government Land Revenue in this Presidency when certain specified conditions shall have been fulfilled, and in this case we have no hesitation in expressing our concurrence in the opinions already recorded by this Government on previous occasions that the time has not arrived, and is probably still very distant, when any such measure could be adopted without serious injury to the

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interests of the community and of the State as representing the community, or with any real benefit to small sections of the community or to individuals. The demands on the resources of the Government on account of improved administration are constantly increasing, and are likely to increase for a considerable period at a very rapid rate, and the improvement of the Government revenue from the extension of cultivation over the large area of culturable waste is one of the most valuable and legitimate sources of supply to meet those demands to which the Government can look, and on which they may confidently rely, and we are of opinion that the Government would not be warranted in relinquishing any such means for aiding the development of the country, or meeting those claims for most necessary improvements which are loudly demanded in almost every department. Irrigation works, Sanitary measures, Communications, Education, Jails, and many other branches of the administration will, for some time to come, tax to the utmost the resources of the State to effect the amelioration which they require, and demand not only that no legitimate source of additional revenue shall be relinquished, but that all shall be improved to the utmost.

19. Then, as regards small sections of the community or individuals, we are of opinion that the absolute free relinquishment to village communities of any extent of waste beyond what is sufficient for common purposes, would be by no means a boon of unmixed advantage. It would unquestionably lead to much dissension.

20. The distribution of the land is not at all likely to be so carried out as to leave no cause for just complaint. The ultimate occupants would certainly have to pay to private individuals at least as much as would ordinarily be paid to Government, and, at the best, the result could only be that the few would gain what the general community would lose.

21. But we observe that in Sir S. Northcote's Despatch of 23rd March 1867 to the Government of India, it is directed "that no permanent settlement shall be concluded for any estate to which canal irrigation is, in the opinion of the Governor-General in Council, likely to be extended within the next twenty years, and the existing assets of which would thereby be increased in the proportion of 20 per cent.," and we desire to know whether this rule is to be deemed applicable to the Madras Presidency.

22. The course which, under the orders of the Secretary of State, has been followed in this Presidency in dealing with lands irrigated from the canals which have been recently constructed, has been to levy, in addition to the assessment imposed upon the land with reference to its productive qualities irrespective of irrigation, such a water-rate as is deemed sufficient to yield a fair rate of interest on the capital expended in the construction of the works.

23. Hitherto it has not been contemplated to demand from the landholders obtaining water from such works any addition to what may be designated the *dry* assessment on the land beyond the price of the water, and we consider that this is the policy to which the Government ought to adhere.

24. But as it is apparently inconsistent with the rule above quoted, it seems desirable that we should obtain some more definite and express instructions on the subject.

25. We proceed to consider the question of "the settlement in perpetuity of the *assessment* at the present or the revised rates," which is expressly contemplated in the same paragraph, with reference to the case of the Ryotwari system prevailing in this Presidency, under which the settlement of the Government demand is made with individual cultivators, and is based on field assessments.

26. We admit that the right of Government to a revenue from land in this country is limited by immemorial custom, and is indeed solely derived from ancient authorities, which prescribe for the State a specified share in the produce of all cultivated land; and we see no reason to doubt that by the principles enunciated for the guidance of those engaged in the revision of the assessment, the share assumed for Government is everywhere kept within that limit.

27. Such being the case, we are unanimously of opinion that no objections bar, and that it would be advantageous to make, a declaration to the landholders that the grain assessments on the land are permanent.

28. But we are not prepared to make a like recommendation in regard to the money rates, regarding which it appears to us that the ryot has no just claim to a monopoly of the advantages accruing from a rise in prices consequent on circumstances over which he has no control, and the changes in which he in no wise influences, while the Government would certainly at no time be able to resist the claim for remission based on any material and sustained fall in prices.

29. The permanency of the Ryotwari settlement which has undoubtedly been asserted on several occasions, and which has been repeatedly insisted on of late years, has unquestionably hitherto been entirely one-sided. The Government have not raised their demand with reference to improved prices for produce, but they constantly make large remissions with reference to temporary unfavourable conditions of season, and they have repeatedly made liberal reductions in the rates of assessment, when these rates were shown to their satisfaction to be oppressively high and repressive of enterprise.

30. We attach great importance to the principle of moderation in fixing the commutation rate. We fully recognize the good policy of relieving the land from all oppressive burdens, and of aiding the landholder in exceptional seasons. But we consider that there should be a certain measure of reciprocity, and that the State should not be excluded from all share in advantages derived by the landholder from the improvement in prices to which, as cultivator, he contributes nothing.

31. The increase in the value of agricultural produce is the effect of an improvement in domestic and foreign markets, over which the ryot has no control, or is owing to the more extended discovery and depreciation of the precious metals, in which he has no part. To give him the *whole* benefit of the expanding value of his commodity, would simply be to reward him for the merits and exertions of others, or for the accidents of the period in which we live.

32. We do not desire to decry the advantage of permanency in a settlement with the land-

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holders, as tending to encourage them to improve their properties, and giving them a feeling of security, which is valuable in its political effect; but we conceive that these results will be in great measure equally attained by declaring the permanency of the grain assessments, and by giving such an assurance of stability in the settlement of the money rates as shall enable the present generation to regard it as possessing for them all the practical advantages of a settlement in perpetuity.

33. We might enlarge upon the subject, but this communication has already run to considerable length, and we have probably said enough to indicate the grounds of our opinions.

34. We, therefore, submit the subject for your decision, with the expression of our opinion that under the revision of the Land-tax now being carried out in this Presidency, the grain assessments should be declared permanent, but that the money rates should be declared unchangeable only for a period of 30 years, and liable to revision at the end of that time with reference to the prices then prevailing and if the Government of the day should then think fit.

We have the honour to be,
Right Honourable Sir,
Your most obedient, humble servants,

FORT ST. GEORGE,
8th July 1868.

Read the following Despatch from the Right Honourable the Secretary of State for India, (Revenue,) to His Excellency the Right Honourable the Governor in Council, Fort Saint George, dated India Office, London, 8th April 1869, No. 7.

I have had under my consideration in Council the despatch from your Excellency in Council, dated the 8th of July in last year, in which you forwarded your Proceedings on the proposals of the Director of Revenue Settlement and the Board of Revenue for the revision of the assessment of the Salem District. You state that, although you have decided some of the main points of the settlement, you have referred it back to the Board on a point of detail, and take the opportunity of applying for instructions on two points connected with the duration of the settlement.

2. I have perused these important papers with interest, and have to signify my approval of the view which you have adopted of the fairness of commuting the grain-rates into money on the average prices of the last twenty years, instead of those of the larger period of forty-four years, as proposed by Mr. Puckle.

3. I concur with the opinion of your Government that it is "eminently desirable" to commute the liability to perform customary labour on works of irrigation into a money-payment throughout the Presidency; and I admit the necessity of restoring the organization of the establishments for the Revenue Settlement as a separate department.

4. The questions which you have referred for decision are—

I. Whether the rule in Secretary Sir Stafford Northcote's Despatch to the Government of India of the 23rd of March 1867, "that no "permanent settlement shall be concluded for any "estate to which canal irrigation is, in the "opinion of the Governor-General in Council, "likely to be extended within the next twenty "years, and the existing assets of which would "thereby be increased in the proportion of twenty "per cent.," is to be deemed applicable to your Presidency? And

Paragraph 21.

II. Whether, with respect to the despatch of Secretary Sir Charles Wood of the 9th of July 1862 to the Government of India, the grain assessments under the revision of the Land-tax now in progress may not be declared to be permanent, and the money rates changed, if thought advisable by the Government of the day, every thirty years?

Paragraphs 25 to 34.

5. I will consider this last proposal first. I find that since 1856, the question of declaring the grain assessments permanent has frequently been referred for the decision of the authorities in this country, and it has been decided, both by the Court of Directors and by the Secretaries of State, that the settlement should be a money-assessment founded upon due consideration of all the circumstances of the district, and revised after a term of years, and that your Government, so far back as 1858, directed the issue of a Notification to this effect. Her Majesty's Government must adhere to that decision, nor do they see, as your Excellency in Council seems to do, in the despatches addressed to the Government of India, in and from 1862 to the present time on the general question of permanent settlement throughout India, anything inconsistent with this view. It seems to me impossible to read paragraphs 66, 67, 69, and 70 of the despatch of the 9th of July 1862, some of which are quoted by your Government, without being impressed with the conviction that it was thought highly improbable that either your Presidency or that of Bombay, but particularly the former, should be brought, or at all events not for many years to come, within the terms under which alone it was permissible to confer a permanent settlement upon the land-owners. Your Excellency in Council distinctly states, in the despatch now before me, that "the time is probably still very distant when any measure limiting the maximum amount of the Government revenue," under the conditions laid down, "could be adopted "without serious injury to the interests of the "community, and of the State as representing the "community, or with any real benefit to small "sections of the community or to individuals," and it certainly is not the desire of Her Majesty's Government to force on any immature concession of this nature. They concur with you in the expediency, and, indeed, the necessity, of keeping in the hands of the Government such a legitimate source from which to supply the increasing wants of the State for the benefit of the people, as the extension of cultivation among waste lands. They are also happy to agree with your Government in opinion that, under the principles of the revised settlement now in progress for adjusting the assessment and fixing it for a term of years, the share taken by the Government is kept within limits which are perfectly equitable to the cultivator. But they are unable to see that it is, therefore, necessary to make a declaration to the landholders that

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the grain assessments are to be permanent. On the contrary, they feel themselves precluded, for the same reasons which your Excellency in Council has urged in your 18th paragraph for retaining the waste lands, from sanctioning the surrender of such a legitimate source of revenue as the Government share of the increased value which has been conferred on the land by improved administration, the construction of public works, especially works of irrigation and railways, together with the improved price of agricultural produce.

6. On the same principles, there will be no objection to your applying to your Presidency the rule laid down in Sir Stafford Northcote's despatch of the 23rd of March 1867, to which you refer, should the conditions be found fulfilled at any of the stated periods for revising the settlement. Her Majesty's Government do not intend by this to depart from the instruction repeatedly issued by former Secretaries of State, that the assessment should be kept (whenever it can be so kept) wholly distinct from the sum paid for the use of water supplied for irrigation. But this again is not inconsistent with the Government, on the revision of the assessment at the expiration of the term for which it was made, receiving their due share of the improvement in the value of the land which has arisen from water having been brought within reach of it for irrigational purposes, a circumstance which is quite distinct from the sum paid by the cultivator for the use of the water.

7. I have, therefore, to inform you that, if the conditions are fulfilled, the rule laid down by my predecessor may be applied to the Madras Presidency, and to direct that the previous decisions of the Home authorities, by which the assessments were to be revised after a period of thirty years, be adhered to. And, with reference to the observation at the close of the 6th paragraph of your despatch, no time should be lost in making known this determination to the people.

REVENUE DEPARTMENT.

No. 7.

To the Right Honourable
the Secretary of State for India.

My Lord Duke,

We have the honour to acknowledge the receipt of your Grace's despatch of the 8th April 1869, No. 7, in which you approve of our proceedings on the revision of the settlement in the Salem District; but as regards the general question raised by us of declaring permanent the grain-values arrived at during the present revision of assessment in this Presidency, you adhere to the adverse instructions already issued.

2. We would respectfully solicit a re-consideration of your decision on the latter point on the following grounds:—The proposal advocated by this Government, while securing many of the acknowledged advantages of a permanent money-assessment, will be free from the principal objections to that measure. The political advantage of giving the occupiers of Government land a direct interest in the stability of our rule, by declaring that the actual quantity of the crop now taken by Government will never be increased, is considerable. Still greater would be the social advantage of providing a really popular and safe investment for the daily increasing wealth of the country, and though, under the existing system, the desire to become the possessor of land, which is very general among all classes, has had, and will have, the effect of inducing the investment of a certain amount of capital in its purchase, still it is difficult to believe that any large amount will ever be devoted to the *improvement* of land, so long as it is apprehended that after every period of thirty years, the increased value which the land has attained by private outlay of this description will be investigated, and the State demand upon it proportionably augmented. The heavy charge involved in a revision of the assessment every thirty years would also be obviated, as the expensive part of the process lies in the classification and investigation of the different soils, while the mere adjustment of the commutation rate, which would be all that would be required were our proposals adopted, could be effected without any special establishment or prolonged local inquiries.

3. Again, the main argument against a permanent settlement of the land revenue, *viz.*, that the State would be thus cut off from all participation in an expanding source of revenue, although the expenses of administration are unavoidably progressive, falls to the ground, if the permanency of the settlement be limited to the grain values. The State would, under the system recommended, still profit by all extensions of cultivation, and would share, with the occupiers of land, the increased value given to the land by that natural rise in prices which is usually attendant upon augmented local consumption, larger exports, and greater abundance of the circulating medium.

4. With advertence to the concluding sentence in paragraph 5 of your despatch, we submit that, however cogent the objections offered may be to a permanent money assessment, they can hardly be said to apply, with equal force, to our proposal, inasmuch as the Government share of the increased value which will be conferred upon land by improved administration, the construction of public works, etc., must almost invariably take the form of a higher price for the produce of the land. We consequently venture to question the policy of foregoing the general advantages attendant upon the measure proposed by us, for the doubtful and partial gain which might be obtained by a re-valuation every thirty years of the lands to which water has been newly applied, as alluded to in paragraph 6 of your despatch.

5. We take this opportunity of forwarding, for your Grace's information, copies of our orders noted in the margin the one transmitting your despatch under reference to the Board of Revenue, with the necessary instructions; and the other directing the introduction of the revised assessment into the Salem District, on the scheme approved by your Grace in that despatch.

Pros. of Govt., 28th Sept. 1869, Nos. 436—439.
" " " 444, 445.

We have the honour to be,
My Lord Duke,
Your Grace's most obedient, humble servants,

Fort Saint George,
30th Sept. 1869.

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THE

MADRAS REVENUE REGISTER.

No. 5.] MADRAS:—MONDAY, MAY 16, 1870. [Vol. IV.

FISCAL SCIENCE AND THE INCOME TAX.

As a fitting supplement to our leading article, in our last impression, on the views entertained by the present Government of Madras in respect to the land assessment of this Presidency, we reproduce in our present impression a very able paper on Fiscal Science, which was originally delivered as a lecture in the Town Hall at Bombay by Mr. Robert Knight, F. S. S., and editor of the *Indian Economist*. Mr. Knight has treated his subject in a very interesting and popular style, but at the same time it appears to us that he has dealt with it in an equally sound and observant spirit; and there can be no question that his views of Financial Economy, as applicable to India, are more entitled to respect than the second-hand English theories of the amateur statesman, who has aroused a spirit of antagonism to centralization in every part of this great empire. Every ordinarily informed mind must be aware that the circumstances of the two countries, England and Hindostan, are widely different. Whether rightly, or wrongly, the Sovereign in England had long parted with his territorial interests, and the ministers of the Crown, therefore, are compelled to raise the necessary funds for administering the government of the kingdom by what is called indirect taxation, the proceeds of which are collected through the Custom-House and Excise Office, the Postal Department, and the Stamp Office. The theory of this indirect taxation is that it is levied on the luxuries, not the necessaries, of life; but, though it is called indirect taxation, it reaches the masses of the people in England. The tastes of her people are very different from the simple habits of the half-clothed people of this country; and what are luxuries in name, such as tea, coffee, sugar, and manufactured goods, are absolutely so many indispensable necessities to the English community at large—each lightly taxed in itself, but, from the quantities consumed by an immense population, producing in the end an enormous out-turn. Then again, in the language of Mr. Knight, "England is a rich manufacturing country, a country of great landlords, merchants, manufacturers, bankers, lawyers, men of science, wealthy farmers, rich tradesmen, comfortable middle classes, and high-wage earning workmen;" whereas "India is a purely agricultural country, a country of peasant farmers, and petty shop-keepers," whose "vocation is to till the land; to produce food and the raw material of clothing for other lands as well as for herself." Here no indirect taxation can ever be productive, for it cannot reach the masses; and with the sole exception in the case of salt, which is con-

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sumed by the poorest as well as the richest man, political economy has not been so perverted even in India as to levy imposts on the simple necessities of life. With these striking differences in the circumstances and people of the two countries, Mr. Knight is not singular in his opinion that to arrange for recouping the treasury of the State by an income tax is a most unstatesman-like measure. Such a tax can never reach the masses; and, for the comparatively small amount that it realizes, it is unworthy any enlightened Government to cause, by its unjustifiable imposition, all the annoyance and disgust it does to the only few who fall under its operation. Mr. Knight is, therefore, perfectly right and sound in his proposition that the legitimate source of revenue to the State is the *land*, which, properly handled, is equal to the demands of even an imperial expenditure. Happily for us, we succeeded to a rich heritage when we came into possession of this country. The land tax was no novel institution. It did not even owe its origin, as Mr. Knight implies, to our Mahomedan predecessors, but it was an accepted doctrine of the more primitive and far simpler school of the Hindoos. What does Manu, the fountain of all Hindoo law, say? In the seventh chapter of his famous Institutes, treating of government and public law, this great legislator lays down his precepts on the duties of the sovereign in the following characteristic language—"As the leech, the sucking calf, and the bee, take their natural food by little and little, thus must a king draw from his dominions an annual revenue. Of cattle, of gems, of gold and silver, added each year to the capital stock, a fiftieth part may be taken by the king; *of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil, and the labour necessary to cultivate it.* He may also take a sixth part of the clear annual increase of trees, flesh, meat, honey, clarified butter, perfumes, medical substances, liquids, flowers, roots, and fruit. Let him not cut up his own root by taking no revenue, nor the root of other men by excess of covetousness; for, by cutting up his own root and theirs, he makes both himself and them wretched." Here, then, we have Hindoo warrant for the Sovereign taking, not a mere quit-rent from the land, but an actual *share of the produce,* either a twelfth, an eighth, or a sixth, *according to the difference of the soil, and the labour necessary to cultivate it.* These small proportions for the support of the State were fixed, it should be borne in mind, at a time when the cost of government must have been very small compared with what it is in modern days; at a time when the form of government was quite patriarchal in its constitution; at a time when the monarch himself dispensed justice with his own hands between subject and subject, as we might well fancy would be the case about a thousand years before the Christian era, when tradition informs us Manu lived and wrote. Be the proportions what they might be, it is clear that the principle was laid down and thoroughly well understood from the earliest ages in India, that the State was entitled to share in the produce of the soil according to its capability. What might have been the real share of the produce which the Hindoo rajahs took subsequent to the days of Manu, we are not aware; it is certain that our immediate predecessors, the Mahomedans, raised the share of the State to half the net produce; and, when we came into possession, we found the people both accustomed to pay this share, and quite content and able to pay it. The British Government were not, therefore, called upon to relinquish this heritage to which they had succeeded, as they did wholesale in Bengal, where they parcelled out the land among a number of landlords, reserving for the purposes of

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the State a small quit-rent, absurdly insignificant compared with the immense profits derived by these middle-men from the actual cultivators of the soil. How absurdly insignificant this might be we may gather from one instance ready to hand. We refer to the Privy Council case from Bengal, reported at page 117 of our last impression, where it will be seen that a whole taluk—not a mere village—composing an extensive and most valuable property had been bestowed on one Ramdhone Chatterjee and his heirs for ever at a fixed rent of 349 sicca rupees a year! Well may Mr. Knight, in his strong and indignant language, denounce this system as tampering with the national property. And this tampering with the national property is the more wicked and inexcusable, when it is considered that a Government is established, not for the advantage of the few, but for the good of the commonwealth—not that a few men should get rich and grow fat in idleness, while the public deficit is sought to be made up by direct taxation of the enterprize and industry of the community. But while Mr. Knight is properly indignant with Bengal policy, he unjustly includes our Madras system in his sweeping remarks. He says in one place, "Again, the modern land settlements of the Madras Presidency are being made for thirty years upon the assumption that the price of paddy is, and will remain, £2-0-7 per ton, whereas the real price for years past has been two or three times that rate. Now, it is these proceedings which are the cause of all our embarrassment, and of the necessity of this new income tax. We are fixing the land revenue for long periods of time at these absurd rates, while we are committed to an indefinite outlay upon public works for improving the value of the land. Our finance is in the hands of men who are simply blind." In another place he remarks, "In Bengal, Behar, Orissa, a part of the North-West, and of Madras, the State inheritance is wholly lost; and the sacrifice would have been universal, I believe, but for my own personal, persistent, and passionate efforts." And yet further on he observes, "Throughout Bengal, Behar, Orissa, a part of the North-West Provinces, and Madras, as I have said, we have divested ourselves of all right whatever to share in the future value of the soil." These were startling words to us. Putting aside the question how far Mr. Knight's very modern personal and passionate efforts might have influenced Madras administrators ever since the British assumption of the country, we were fondly indulging, and, in spite of Mr. Knight's endeavour to remove our misconception, are still indulging the very foolish delusion that our Revenue system is a model system; that, in fact, the Madras revenue system and a ryotwari settlement were convertible terms; in other words, that it is our system *par excellence* which makes the Government revenue perfectly elastic, expansive, and co-extensive, with increase of cultivation and increase of prices. That Mr. Knight is utterly wrong in charging the Madras Government with any tampering with the national heritage, we have only to refer to the recent exhaustive discussion to which we gave publicity in our last impression on revision of assessment in this Presidency. It will there be seen that Lord Napier and his councillors have laid down certain fixed principles for conducting this settlement with the ryot. In the first place, they declare that the State is entitled to *half* the net produce; in the next, that, considering how prices of grain have doubled and trebled since the conversion of the Government moiety into money had been determined in years past, the commutation rates now payable are to be calculated on the prices of the last twenty years; in the third place, that these ascertained money

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payments, for the purpose of avoiding annoyance both to Government and people, are to last for thirty years, when the rates are to be open to revision according to later standards of price; and fourthly, that all waste land brought under the plough is as heretofore to pay its quota to the great land revenue of the country. What can be a fairer or more equitable adjustment of the rights of the cultivator on the one hand and the claims of the State on the other? There is here no tampering with the national property, no divesting ourselves for ever of all right to share in the future value of the soil. On the contrary, the policy of our Madras statesmen preserves the just half to which each is entitled; for, while the State derives an increasing revenue corresponding with increase of prices and extension of cultivation, the husbandman's moiety of the produce is improved and secured to him in exactly the same proportion and under similar conditions.

Mr. Knight says that an income tax is simply a fraud on the people of Madras, Burmah, Bombay, and other provinces, all which are already contributing more than their proper share to the imperial treasury, and that we are called upon to pay this tax to make up a deficit brought about by official tampering with the land revenue in other provinces of the country. Certainly he gives a remarkable, and almost incredible, instance of this official tampering with the national heritage in the case of the settlement of Raepore in the Central Provinces. If his figures are correct, there are 1,866,924 acres of land actually under cultivation in Raepore, the total value of the harvests gathered from which is calculated at 163½ lacs of rupees a year; and yet, for the next twenty years, the Government share of this enormous produce is not to be more than 6½ lacs of rupees, or about one-twenty-seventh the annual produce of the land! Even in the days of the simple State machinery of Manu, the smallest share of the Sovereign in the produce of the soil was declared to be a *twelfth*. Here in Raepore, which is said to be "a land of plenty, where want is unknown, and the rainfall never fails," the share of the State in these advanced and costly days is settled nominally at one *twenty-seventh*; but, if Mr. Knight is right, "the assessment in point of fact is not *one-fiftieth* of the harvest." In the telling words of the lecturer, "the single harvest gathered in Raepore in the last twelve months will suffice to pay the whole *twenty* years assessment *three times over!*" Can anything be more absurd? Is it for monstrous blundering of this kind that we, who have had no share in it, must pay the penalty? There is no doubt, considering the adaptation of our system of revenue to the wants of the day, that an income tax is utterly uncalled for in this Presidency. If it cannot reach more than one in a thousand, what good does it obtain for the State in return for all the worry and annoyance that it causes to the few who fall victims to its operation? That an income tax, odious in all its features, is unsuited to this country as a means of raising revenue, cannot be denied. It is true that a tax of the kind was collected under the native Governments under the designation of *Veesbady*; but then, it was confined to those only who were engaged in commercial pursuits. The great zemindars and salaried officers of the State were exempted from its operation; and the collections from this source were consequently small, though the officers employed in collecting it possessed a most fruitful source of swelling their illicit gains. This tax, long ago abolished, is now sought to be re-imposed by the British Government under the designation of an Income tax, and every class of Her Majesty's subjects is required to pay it, provided the income of the individual does not fall below a certain

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standard. What is the result? The result has been simply unsatisfactory, since the bulk of the receipts from this source consists chiefly of stoppages out of the guaranteed allowances to Government officers and servants of other public establishments, and a certain percentage on the estimated incomes of well-known merchants, bankers, and lawyers. Then, to take another view of this tax—it may possibly be a low one—the agency employed in its collection is certainly not what it ought to be, while the Income Tax Act is a powerful engine in its hands for oppressing the people. The result often is a compromise between tax-payer and tax-gatherer to the manifest prejudice of the State. This view of it alone is sufficient to condemn the income tax. The true remedy is to alter the revenue system, where needed, in districts in which the Government have not irrevocably pledged themselves. It may be a very difficult question whether the present Government are still bound by the policy of Lord Cornwallis in Bengal. Considering that Governments exists for the good of the commonwealth, and not for the advantage of a favoured few, it may be a fit subject for discussion whether one generation is justified in restricting for ever the action of the next. It is a great question, but a question entirely beyond the range of our capacity, whether the permanent settlement system of Bengal may not be open to revision under the present circumstances of the day. However foolish the policy of Lord Cornwallis, we could not advocate a withdrawal from an act of the State which deliberately divested itself of its great landlord rights and solemnly conferred them upon certain individuals and their heirs for ever, subject to a certain proportionate payment to the State. But this transfer of rights must have been based upon a certain principle of calculation on an existing state of things, and governed by an equitable division of profit between the donor and the donee. If circumstances have disturbed this proportion, and these circumstances have been brought about, not by the action of the grantee, but by the direct action of the State, or the accidents of the period in which we live, would it be unfair in the State to require that the original equitable division of profit be restored, by proportionately increasing the contribution calculated in the exigencies of those days to be sufficient towards defraying the cost of maintaining public order and the public peace? If such a discussion is impossible in connection with the permanent settlement system of Bengal, surely the Government of India have it in their power to establish proper systems of land revenue in districts such as Raepore, where we apprehend no pledges have been given to individuals or the people at large. May not our enlightened Government draw from the stores of wisdom embodied in the few simple words we have quoted from the famous Hindoo Sage? "Let him not cut up his own root by taking no revenue, nor the root of other men by excess of covetousness; for, by cutting up his own root and theirs, he makes both himself and them wretched." To take but one-fiftieth of the produce of a land of plenty is to cut up the root of the State; while to impose an income tax and an ugly tax on justice in Madras, which already contributes more than its proper share to the imperial treasury, is simply to cut up the root of other men, and to make both State and people wretched and discontented.

OFFICIAL RECORDS.

We have received from the Revenue Secretary to Government a valuable selection of papers on the Settlement of the Chellumbrum and Manargoody Taluks of South Arcot, and a very handsomely illustrated edition of the history of the Seven

Pagodas, to both of which we shall endeavour to do justice as soon as we can command the necessary leisure.

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND HOLLOWAY, J.

Zemindary—Lease—Sub-lease—

In a suit by a Zemindar (lessor) against the lessee to set aside the sub-lease granted by the latter to a third party, and where the contract of lease contained no stipulation against any transfer of interest—

HELD *that the right to assign, or sub-let, is an established incident of a tenancy at a rent for a determinate period, when the contract of letting is silent on the subject; that the terms of the lease in question did not evidence an agreement that the tenancy should not be assigned by the original lessee, or his heir by will succeeding him.*

SEMBLE.—*There is no distinction, as to the rights incident to a temporary tenancy, between the lessee of an entire zemindary and the lessee of a portion of it, or of other lands.*

R. A. No. 70 of 1869.

S. M. R. Ranee Kathama Natchiar *v.* Robert Fischer, Esq., and another.

THE plaintiff in this suit was the Ranee of the Shevagungah Zemindary (Madura district). She had engaged for many years in litigation, seeking to recover possession of her zemindary, which was in the hands of a collateral member of the family. At length, on the 8th December 1863, owing in a great measure to the continued exertions of Mr. G. F. Fischer, the father of the first defendant, a decree was passed in the Privy Council adjudging to her the zemindary in question. Mr. Fischer was for many years her friend, counsellor, and adviser; and, wishing to make a suitable recompense to the man to whom she was so much indebted, she executed to him on the 22nd January 1864 a lease of the said zemindary for ten years subject to certain conditions, and confirmed the same after his death to his son (the first defendant) by a kararnamah executed by her on the 5th July 1867. The first defendant came into the possession of the zemindary in virtue of his father's will, after which, on the 8th December 1868, he executed a deed of assignment of the unexpired portion of his lease to one Vencatasawmi Naick, the second defendant, and made it over to him without the consent, and in spite of the express remonstrances, of the plaintiff. The plaintiff brought this suit to set aside the above assignment. She stated that the late Mr. G. F. Fischer, first defendant's father, conducted for many years on her behalf the suit in which she ultimately recovered her zemindary, and was for many years her legal adviser; that, in consideration of his great services to her, she executed the lease of the zemindary to him for ten years at the yearly rent of one lac of rupees; that the said lease was purely personal between her and the said Mr. G. F. Fischer, contained no power to sub-lease the zemindary, and was not expressed to be made in favour of his assignees; that Mr. Fischer, knowing well that the lease was a personal benefit to him not transferable without her consent, requested her shortly before his death to be allowed to substitute his son (the first defendant) in his stead for any such portion of the term of the lease as might remain at his death, and represented to her that he had bequeathed by his will such unexpired portion to his son (first defendant); that she consented to his request, and, in furtherance of that consent, she and Mr. Fischer entered into an agreement, (kararnamah of the 5th July 1867,) whereby she expressed her willingness to recognize in his (Mr. Fischer's) stead his son, first defendant, agreeably to the will in his favour, and under the terms of the covenant in the said agreement and the aforesaid lease; that, after Mr. Fischer's death, she recognized his son, the first defendant, agreeably to his will, as having and enjoying all his father's interests in the unexpired portion of the lease; and that, under the circumstances above stated, the assignment by the first defendant to the second defendant of all his right, title, and interest in the unexpired portion of the lease, without her consent, and in direct opposition to her wishes, was altogether void, and of no effect. She further added that the assignment to a third party would relieve the first defendant from his responsibility of making her the stipulated annual payment of a lac of rupees, whereas she could not compel the second defendant to make that payment, as she was no party to the transfer, and as the relationship of lessor and lessee did not exist between her and him. The first defendant contended that the lease was not purely personal, but was expressed to be made between the plaintiff and her heirs on the one part, and the first defendant's father and his heirs by will on the other part; that the lease contained no covenant or stipulation against sub-letting, or assigning the whole or any part of the interest of the first defendant's father in the term of the lease; that his father did not request the plaintiff at any time to be allowed to substitute him (first defendant) in his stead as lessee of the zemin-

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dary; and that he (Mr. Robert Fischer) did not recognize any right in the plaintiff to give her consent to any transfer of the lease made in his favour; that he (first defendant) did not succeed to the unexpired portion of the lease by virtue of the plaintiff's recognition of him as heir of Mr. G. F. Fischer, but, on the contrary, he succeeded to it under his father's will; that the agreement of the 5th July 1867 contained not only a recognition of the first defendant's right as Mr. G. F. Fischer's heir, but also a ratification of the original lease; and that he had a legal right to make the assignment to any person he pleased, and that, therefore, his assignment to the second defendant was perfectly valid in law and binding on the plaintiff; further, that he has not repudiated, and does not repudiate, his liability to pay the rent to the plaintiff during the existence of the term. The Civil Judge, in an elaborate judgment, found that the assignment was invalid, and, as such, must be cancelled. The following is extracted from his judgment:—"To sum up; the conclusion I have arrived at upon the evidence is that Robert Fischer has no larger powers than his father had; that the idea of alienating or parting with the zemindary during the existence of the lease never entered into the conception of either the elder Fischer or the plaintiff; that the absence of any negative stipulation does not affect the construction of the document, as gathered from the language used and the obligations that were imposed on both parties; and, finally, that the burden of proof rests with the defendants to show that the plaintiff was improperly informed of what might be the possible legal consequences arising to herself and the elder Fischer by the omission of this clause—a burden from which, it is clear they have not relieved themselves." The second defendant (Vencatasawmi Naick, the sub-lessee) appealed to the High Court. Gould, O'Sullivan, and Ram Row appeared for the appellants, and the Advocate-General and Mr. Mayne for the respondent. Gould, for the appellants, cited numerous authorities to show the law of the case; but, as the law was not disputed by the learned Advocate-General, the whole point turned upon the construction of the lease and the kararnamah. The High Court delivered the following

Judgment:—4th March 1870.

Per Scotland, C. J.—This is a suit to invalidate an assignment by the first defendant to the second defendant of the unexpired term of a lease for the term of ten years of the zemindary of Shevagungah, granted by the plaintiff to the father of the first defendant, on the ground that the contract of the parties is a personal one for a tenancy by the first defendant's father and the first defendant as his recognized heir, and that the unexpired term was, therefore, not assignable without the consent of the plaintiff. The lower Court has upheld that ground and decreed that the assignment is invalid; and, the decree having been appealed from by the second defendant, we have now to determine whether it can be sustained.

There is no question as to the general rule of law which must govern our decision.

The right to assign or sub-let is, I apprehend, as well established an incident of a tenancy at a rent for a determinate period, when the contract of letting is silent on the subject, as it is of an estate for life or estate of inheritance. In order, therefore, to invalidate the assignment in the present case, it is necessary that one of two grounds should be established—either that the nature of the conditions attached to a zemindary estate are so inconsistent with an assignment of the entire estate without the Zemindar's consent, as to necessitate our holding that a lease of it is an exception to the general rule; or that the terms of the original lease import, when properly construed, an agreement between the parties that the tenancy was not assignable.

Now, as respects the former ground, nothing of force was advanced in support of it at the bar, although the Court in the course of the argument directed the attention of the learned counsel for the respondent to the matter; and I am not aware of anything in the nature of the tenure by which zemindaries are held to require that a distinction should be made as to the rights incident to a temporary tenancy between the lessee of an entire zemindary and the lessee of a portion of it or of other lands.

Then, as to the point of the construction of the lease. The whole ground of the judgment of the lower Court, and of the contention in support of it, is that the language of the lease evidences a contract of tenancy purely personal to the first defendant's father and the first defendant himself, and so excludes the right to assign it to another. This interpretation is, in my opinion, clearly unsustainable. There are, no doubt, terms imposing upon the lessee, obligations which he is personally bound to fulfil and cannot relieve himself of by the simple act of making an assignment. But that is commonly so in the cases of leases, and it does not appear to be the necessary effect of the assignment in this case to interpose any obstacle in the way of the lessee's due fulfilment of his obligations. Beyond those obligations, stress was laid by the Advocate-General on behalf of the Ranee only upon the stipulation in the lease, *And we have agreed, I for myself and my heirs, and you for yourself and your heirs as per your will, to abide by the conditions of this deed.* He urged that, when effect was given to the further stipulation in the agreement of the 5th July 1867, that the Ranee should, according to the will of the lessee, take on his death his son, the first defendant, as the succeeding lessee for the remaining term of the lease, it

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was apparent that the parties intended a strictly personal tenancy. It appears to me that the words of the lease import no more than the passing of the rights and obligations attaching to the lessee by succession to any person as heir whom the lessee might by will declare to be his heir; and I think the stipulation in the agreement of the 5th July 1867 was entered into simply for the purpose of pledging the Ranee beforehand to the recognition of the first defendant as the heir by will to succeed to the unexpired term of the tenancy. In my view, therefore, neither stipulation tends to show an agreement for a personal tenancy; and, upon the whole, I entertain a clear opinion that by the lease a tenancy for the term of ten years certain was granted to the original lessee and to his heirs by will on his death before the expiration of the term, and that there is nothing in the lease evidencing an agreement that the tenancy should not be assigned by the original lessee or his heir by will succeeding him, and consequently that the decree should be reversed with costs.

Per Holloway, J.—I am of opinion that the decree of the Civil Judge must be reversed. It in effect declares that the lessee of the plaintiff is legally incapable of transferring to another the benefits taken by himself under that lease. That without the assent of the plaintiff he can rid himself of his obligations is not contended. It is admitted that by the law of England there could be no doubt of the assignability of this lease. That proposition is indeed so plain that it requires no authority. In all countries the necessities of human dealing have led to a considerable relaxation of what was originally the rule that a man could not transfer an obligation. Various systems, and, as in England, two systems in the same country have relaxed this proposition in different degrees. It is quite clear that the Courts of this country have carried the relaxation as far as it has been carried anywhere, and in so doing they have merely added the force of judicial decision to what the people had by practice recognized as law. As to rights in land, the practice of assigning interests the most infinitesimal is fully established, and such assignments are daily before the Courts, and their validity is never questioned. So far, therefore, as the law here differs from the law of England, the difference certainly seems to be in favour of greater freedom, and certainly no evidence has been adduced and no principle of law referred to which should compel us to import by custom into this transaction a restriction not expressed in the words of the contract. In like manner no principles have been shown which might require us to put upon the words used other than their literal construction. It is quite possible for such to exist, but none have been shown.

Then, is there anything in these words to show a mere personal covenant with the Fischers? The original lease is to Fischer and to any one whom he may name by will. Then the document of the 5th July 1867 agrees to take Fischer the younger *according to your will* in place of the father. Fischer the elder had by that time determined his will, and the specific mention of Robert Fischer seems only an act of prudence intended to prevent disputes after his death. In this mention I can see nothing to show that the agreement was purely personal. The mention of the same person in the document constituting the agency seems to me not to assist the argument. Agency is a purely personal contract, and, if the plaintiff intended him to succeed his father, it was natural that she should say so. Looking again at the duties to be performed, there is nothing to lead to the presumption that the rights were not assignable. This, however, bears only on the question of construction, for the appellant is not contending that he is relieved from any one of the covenants in his lease. I confess that the case appears to me a very plain one, and I think that the decree should be reversed with costs.

Scotland, C. J., and Innes, J.

Attachment of land for arrears—Previous sale to another—Rent Recovery Act—

Where A conditionally sold his land to B, and the Collector subsequently attached it for arrears of revenue due by A, B not giving notice, nor objecting, under Section 35, *Act II of* 1864—

Held, *that the arrears were a* bonâ fide *first charge on the land, and that B ought to have proceeded under Act II of* 1864 *to obtain its release.*

R. A. No. 107 of 1869.

Gajjarapu Anandu *v.* Vadrevu Bapurazu and two others.

This was a suit brought in the Civil Court of Rajahmundry to procure the release from attachment of 8 acres and 92 cents. of jiroyetti land in Peddamalla, which the first defendant had conditionally sold to the plaintiff, and which the Tahsildar, by order of the Collector, had attached in satisfaction of arrears of revenue due from the first defendant. The first defendant permitted the case to be tried *ex parte*. The second defendant (the Collector) pleaded that the land having been registered in the first defendant's name was attached and sold in due course of law in satisfaction of arrears of revenue which he owed to Government. The plaintiff never gave notice of his claim, nor objected to the attachment and sale of the land

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under Sections 35 and 37, Act II of 1864, (Madras.) As the plaintiff's pleader admitted that the plaintiff did not proceed in the manner prescribed by the "Arrears of Revenue Recovery Act," Mr. Morris, the Civil Judge, held that the plaintiff had no right to bring the present suit. He was not the owner of the land, and, had he been a *bonâ fide* mortgagee, he should have proceeded as prescribed by the law. He, therefore, dismissed the suit with costs. The plaintiff appealed to the High Court through his counsel, Mr. Sloan. The High Court delivered the following

Judgment:—1*st April* 1870.

We see no ground for interfering with the decree of the lower Court. The action was altogether groundless. The arrears of revenue, for which the land was attached by the Collector, were a *bonâ fide* first charge on the land, and the plaintiff could have obtained its release in the manner provided by Section 35 of Madras Act II of 1864. This appeal must be dismissed with costs.

HIGH COURT—CALCUTTA.

BAYLEY AND HOBHOUSE, J. J.

Mangina Khatun and others, (plaintiffs,) *v.* the Collector of Jessore, on behalf of Government and others, (defendants.)*

Act XI of 1859—*Sale for arrears of Government revenue.*

Where there has been a sale under Act XI of 1859 *for arrears of revenue but it is found that no revenue is actually due to Government, the sale must be set aside as not coming within the provisions of the Act.*

Baboo *Girija Sankar Mozoomdar* for appellants.

Baboo *Jaggada Nand Mookerjee* for Government, respondents; and *Bangshi Dhur Sen,* for Giridhur Sen, respondent.

BAYLEY, J.—I am of opinion that this case must be remanded to the lower Appellate Court to try, on the evidence on the record whether there were any arrears of Government revenue due to the plaintiffs at sunset on the last day of payment.

The plaintiffs sued for the recovery of possession of a certain taluk, and for the reversal of a sale held for the realization of arrears of Government revenue. The plaint stated that there was a sum of Rupees 14 and odd annas in deposit with the Collector of Fureedpore in the plaintiffs' favour; that the sum alleged to have been due to them (plaintiffs) on account of arrears of Government revenue was Rupees 10 and odd annas, and thus the plaint, though it did not make any distinct allegation in so many express words that there were no arrears of revenue due by the plaintiffs, did, in fact, aver that, if the above sum of Rupees 14 odd had been duly credited in the plaintiffs' favour, it would have been more than sufficient to meet the arrears of revenue, and thus that there were none. There were other averments in the plaint as to irregularities in the notice and such like, but for the purpose of our present judgment it is not necessary to make any further specific observation as to them.

The plea of the defendants, the Collector of Jessore and the auction-purchasers, was that there were certain arrears due by the plaintiffs; that, as under Section 25, Act XI of 1859, no appeal was made by the plaintiffs against the sale, so, with reference to the provisions of Section 33 of that Act, plaintiffs were not in a position to contest the legality of the sale before any Court of justice.

Both the lower Courts have held that, as in this case no appeal was made to the Commissioner under the provisions of Section 25, Act XI of 1859, within fifteen days of the sale, so the provisions of Section 33 of that Act barred the jurisdiction of the Civil Courts to give the plaintiffs any redress, and accordingly dismissed the plaintiffs' suit.

The plaintiffs' appeal specially to this Court and the plea taken is that, as there were no arrears of revenue due, the provisions of Act XI of 1859 do not in any way apply to this case, and consequently the lower Appellate Court's refusing jurisdiction with reference to the provisions of that Act was erroneous in law.

There is a Full Bench decision in the case of *Baijnath Sha* v. *Lala Sital Prasad,** where, though not on a precisely similar state of facts, the principle has been laid down that, where there is no evidence of any arrears of Government revenue being due, the provisions of Act XI of 1859 do not apply, as the sale cannot be said to have taken place under the provisions of that Act.

We fully concur in the principle laid down in that decision, that where there are no arrears of Government revenue due it cannot be said that an Act relating to sales for arrears of Government revenue would apply. This is also the view which we understand has been taken by Kemp and Markby, J. J., in *Sreemunt Lall Ghose* v. *Shama Soondaree Dossee.*† The whole question, therefore, before us is as to whether there were any arrears of revenue due to the plaintiffs by the Government; and, in order to a finding on this point, we think that the ordinary and proper course would be to remand the case to the lower Appellate Court. But before we do this we think it necessary to see whether there is any evidence on the record on the part of the plaintiffs which can form the basis of a judicial finding on this point.

Now the plaintiffs have, in the first place, filed certain accounts, which are not attested either upon their own oath or upon that of any witnesses. These, therefore, can be no legal evidence in their favour.

* Special Appeal, No. 1,268, of 1869, from a decree of the Judge of Small Cause Court with powers of Sub-Judge of Fureedpore, in Zillah Dacca, dated the 13th March 1869, affirming a decree of the Munsiff of that district, dated the 21st November 1868.

* 2 B. L. R., F. B., 1. † 12 W. R., 276.

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There are, then, certain challans of the Collectorate filed by the plaintiffs, purporting to shew that the annual jumma payable and paid for a certain number of years was Rupees 89-1-1, and on a calculation made upon this basis it would appear that the challans of remittances made by the plaintiffs would be some evidence in the plaintiffs' favour, in order to shew that the demand for Government revenue had been, in many instances, satisfied on the calculation adopted by plaintiff on the present occasion. There is, then, also an allegation on the part of the plaintiffs that the practice would be for the money to be deposited with the Collector of Fureedpore, who would make remittances to the Collector of Jessore.

On the other hand it is alleged by the defendants that the plaintiffs' plea simply was that owing to the fault of the patnidars, the sums had not been paid in due time. On the whole, however, I think there is evidence upon which the lower Appellate Court could come to a finding whether arrears of revenue existed or not, and, if that is so, whether the provisions of Act XI of 1859 would be applicable or not.

The case is, therefore, remanded to the lower Appellate Court to find, upon the evidence on the record and on a comparison of the accounts, whether or not there was a balance of Rupees 10 and odd annas due from the plaintiffs to the Government on account of revenue, for which their estates would be legally liable to sale under Act XI of 1859. If it is found that there was no balance due to Government, the lower Appellate Court will consider that the provisions of Act XI of 1859 do not apply to this case, and will take jurisdiction and set aside the sale as not made under that law. If, on the other hand, the Court finds that there was a balance due to the plaintiffs by Government on account of revenue, it will consider that the provisions of Act XI do apply; and in that case it would be right in refusing to take cognizance of the plaintiffs' suit, or give them any relief, on the ground that no appeal had been made to the Commissioner within the fifteen days absolutely prescribed by the law. The costs of this appeal will follow the result.

Hobhouse, J.—I am of the same opinion. I confess I am not without doubts on the subject; but I think, on the whole, that we ought to remand this case to be tried on the issue which Mr. Justice Bayley has laid down. It seems to me that it is a condition precedent to the exercise of any authority by the Collector under Act XI of 1859, and it may be said a condition precedent to the assumption by him of any power under that Act, that there should be an area of revenue due before he can institute proceedings under that Act. Sections 2, 3, and 5 of that Act read together seem to me to be conclusive on this point. The doubt which I have is with reference to the wording of Section 25, which would seem to say that any irregularity committed by the Collector *must* be the subject of an appeal to the Commissioner, and that, unless such an appeal be made within a certain time, the Civil Courts are barred from jurisdiction by the provisions of Section 33. On the whole, however, I am inclined to think that the words in Section 25 cannot be held to apply to anything except to proceedings legally taken under the Act, and so do not apply to that declaratory part of the Act by which jurisdiction is given to the Collector to institute any proceedings at all. The words are these:—"The Commissioner shall be competent, in every case of an appeal so preferred, to cancel a sale which would appear to him not to have been conducted according to the provisions of this Act," so that the appeal would rather seem to be against the irregularity of the proceedings after the sale shall have been ordered, and would seem not to refer to the provisions in the Act which give jurisdiction to proceed to sell; and so again the provisions of Section 33 allude to the irregular conduct of the sale, and not to that part of the Act which gives jurisdiction to conduct the sale; and certainly the principle laid down in the Full Bench ruling which Mr. Justice Bayley has quoted is just as applicable as a principle to the facts before us as it was to the facts of the case before the Full Bench. When reduced to its shortest compass, the principle of the Full Bench ruling seems to me to be comprised in these words, to be found at page 71 of the judgment delivered by Mr. Justice Macpherson—"In the present case no arrear of revenue was due, nor anything which could legally be levied as such. Act XI of 1859, therefore, did not apply to the case at all, and the sale did not take place under its provisions." If, therefore, we could say in this case that no arrear of revenue was due, we should, if we followed that ruling, be obliged to say that Act XI did not apply, and that anything done, therefore, under its provisions was null *ab initio*; and we are quite certain that at any rate we are putting a reasonable construction on the law, for, if it is found as a fact that there was no arrear of revenue due at the sunset of the last day of payment, then there should have been no sale; and if, on the other hand, it be found as a fact that there was an arrear due, then everybody will be kept in the position that he ought to hold, and the only sufferer will be the person who never ought to have brought this suit, namely, the plaintiff.

If the Judge should find an arrear of revenue to have been due he will give the plaintiff a decree, and, if not, he will dismiss his suit.—*14th August 1859.—Bengal Law Reports, Vol. III., Part XVII.*

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Cases.]

Sale of zemindari for arrears—Rights of purchaser and lessees—

On an estate being put up to sale for arrears of revenue, Government purchased it and ultimately put the respondents (descendants of the original talukdar) in possession on different settlements for three successive periods, at the end of which time they sold their zemindari rights to the appellant, subject to any rights the lessees might possess, they having meanwhile been put out of possession. They sued

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to be put back into possession, subject to any enhancement of rent by the Zemindar. The appellant contended that the sale of the estate for arrears of revenue had destroyed the title of the original owner, and that the settlement afterwards made by Government with the respondents was of the nature of a farming lease, so that Government could resume the lands, sell, or cultivate them as it pleased; and further that, if the respondents had any equity for a re-settlement, such could not be enforced in a suit under Act X of 1859.

HELD *that, whatever might have been the powers of Government, they had not annulled the tenure of the respondents before* 1842, *when Regulation XI of* 1822, *under which it might have been done, had been repealed by Act XII of* 1841; *that Government had left the talukdars in the position in which they would have been under the old law, reducing their tenure from a fixed to a variable one; that, though appellant could have sued for enhancement of rent, he could not disturb the possession of the talukdars, nor let the lands over their heads to the highest bidder; and that the suit, being one between under-tenants claiming lands of which they had been dispossessed, and the Zemindar who disputes their title to possession, was rightly brought under Clause* 6, *Section* 23, *Act X of* 1859.

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Khajah Assanoollah *v.* Obhoy Chunder Roy and others, from the High Court of Judicature at Fort William in Bengal delivered 21st February 1870.

Present:

LORD WESTBURY.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

THE appellant is the present owner of the zemindary right in that portion of an extensive estate situate in Zillah Tipperah, and called Buldakhal, which includes the lands and villages that form, or once formed, a taluk known as Taluk Poorba Auttee. This taluk was created subsequently to the Perpetual Settlement, and in the year 1803, by Mirza Hosein Ali, the then zemindar of that portion of the estate, in favour of Bishonath Roy, the father or ancestor of the respondents.

It was an hereditary transferable taluk, to be held at a fixed perpetual rent of 1,550 rupees and $4\frac{1}{2}$ annas. The estate of Buldakhal, at the date of the revenue sales afterwards mentioned, seems to have comprehended many other taluks, of which some had existed at the date of the Decennial Settlement; but the greater part had been created subsequently to the permanent settlement of the mehauls in which they were situated.

In January 1835 an 8-anna share, and in May 1836 a 2-anna share, of the Buldakhal Estate (the latter being the portion which included the taluk in question) were sold for arrears of Government revenue; and in both instances the Government itself became the purchaser, and thus acquired all those rights which the Sale Law then in force gave to a purchaser of a zemindary sold for arrears of revenue.

In the exercise of those rights it proceeded to make a re-settlement of the estate, and proceedings, extending over a considerable period of time, were had against the talukdars, including Bishonath Roy or his representatives. These will hereafter be more particularly considered. At present it is sufficient to state that several settlements were ultimately made with the respondent, Obhoy Chunder Roy, on behalf of himself and the other respondents, in respect of the lands comprised in Taluk Poorba Auttee, namely, a settlement for one year in August 1841; a settlement for twenty years in August 1842; and a second settlement for one year in April 1862. On the expiration of this third settlement the Government Collector gave notice to the ryots and cultivators of the lands comprised in the taluk not to pay their rents to any person except the Government; and on the 23rd November 1863, the zemindary rights of the Government in the lands were put up for sale, subject to the rights (if any) of the talukdars, and were purchased by the appellant.

In March 1864 the respondents commenced the suit, out of which this appeal arises, against the appellant. It was founded on their alleged dispossession from their talukdary rights in the lands, and was brought under the 6th Clause of the 23rd Section of Act X of 1859 before the Collector. That officer, by his decree dated the 7th June 1864, dismissed the suit; but his decision was reversed by the High Court on the 23rd March 1865, and the appeal is against the latter decree and a subsequent order rejecting an application for review of judgment.

The contention between the parties is shortly this. The respondents assert that their taluk is still a subsisting tenure, and that, although it is now, as they admit, subject to enhancement of rent by means of proceedings properly taken by the zemindar for that purpose, it gives them a right of possession or occupancy which he is not entitled to disturb. The appellant, on

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the other hand, insists that the Government, after the sale for arrears of revenue, and in the exercise of its powers as purchaser, effectually cancelled and destroyed the tenure created in favour of Bishonath; that the settlements which it afterwards made with Obhoy Chunder were in the nature of mere temporary ijarahs, or farming leases; and that, the last of these having expired, it was open to the Government, and is now open to him, the appellant, to resume the possession of the lands, and either to make the collections from the ryots and actual cultivators himself, or to make a new lease or settlement with the highest bidder. He further contends that, if the proceedings of Government have given to the respondents any equity for a re-settlement, that equity is one which cannot be enforced in a suit brought under the special statutory jurisdiction given by Act X of 1859 to Collectors in cases of dispossession. It is admitted that the appellant, as purchaser, can claim no higher rights than those possessed by the Government at the date of the sale to him; and that, if Government had then waived or lost the right which it may have had originally to cancel the tenure, he cannot now assert such a right.

The questions argued at their Lordships' bar were—

1. Whether the Government, upon the true construction of Regulation XI of 1822, (the Sale Law under which it purchased,) ever had the right to cancel or destroy this tenure.

2. Whether, assuming that right to have existed, it was ever in fact exercised, whilst it was capable of being exercised.

And lastly, whether the suit, whatever be the rights of the respondents, has been properly brought under the 6th Clause of the 23rd Section of Act X of 1859.

Their Lordships will consider these questions in the order in which they have just been stated.

The general policy of the Revenue Sale Laws that have been passed since the Perpetual Settlement has been to protect the public revenue by placing the purchaser of an estate sold for arrears of revenue in the position of the person who, at the time of the Decennial Settlement, engaged to pay the revenue then fixed. They, therefore, gave, or sought to give, to the purchaser, the power of abrogating all engagements made by the defaulting zemindar or his predecessors since the settlement, whereby the zemindary rents and profits, which were the security to Government for the due payment of its revenue, were diminished. The Indian Legislature, however, has not uniformly tried to effect this general object by precisely the same means. The various statutes which it has from time to time passed for the purpose differ in the language of their provisions and in the stringency of the powers conferred by them. Those enactments, at least those that were passed before 1840, are reviewed in the very able paper signed by Mr. Colvin, which is printed in this Record. It was called forth by a difference of opinion between the Board of Revenue, of which he was then the Secretary, and Mr. Dampier, the Commissioner of the division in which this estate was situate; Mr. Dampier taking the view now contended for by the respondents, viz., that the talukdars, whether their tenures were created before or after the Decennial Settlement, were entitled to retain possession of their lands, subject, save in certain exceptional cases, to the liability of enhancement of rent according to the Pergunnah rates. And this, as is shown by the Record at page 17, was the view of the law expressed by the Board of Revenue itself in May 1833. Mr. Colvin's letter was written in 1836 on behalf of the Board of Revenue to combat and overrule this construction of the law.

To some of Mr. Colvin's conclusions their Lordships give an unqualified assent. They concur with him in holding that, under the Sale Law as it existed before 1822, a talukdar could not be dispossessed of his lands at the will of the purchaser at the sale; that he was at most liable to pay the full pergunnah or district rate for them; and could only be ejected from them if he finally declined to hold them at the enhanced rent. They are also of opinion that Mr. Colvin is right in holding that under Regulation XI of 1822 the law respecting dependent taluks created subsequently to the settlement was "that such taluks were liable to be wholly avoided and annulled at the option of the purchaser at a sale for arrears of revenue," unless they fell within the class contemplated by the 32nd Section of that Regulation. The language of the 31st Section is very distinguishable from that used in the earlier Regulations. It provides that "all tenures which may have originated with the defaulter or his predecessors shall be liable to be avoided and annulled." On the other hand, the 5th Section of Regulation XLIV of 1793 provides only that the *engagements* which the defaulting proprietor may have contracted with dependent talukdars, as also all leases to under-farmers, shall stand cancelled; and that the purchaser shall collect *from the talukdars* rent according to the full Pergunnah rates. The effect, therefore, of the earlier statute was to cancel a farming lease; but to keep alive the talukdar's tenure, though at a rent liable to enhancement.

Hence the question between the Commissioners and the Board of Revenue in 1836 was, as the question between the parties on this part of the case now is, whether talukdars of the class of Bishonath Roy were within the protection of the

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32nd Section. Mr. Colvin contends that "the mofussil talukdars," spoken of in that section, "being described as persons having an hereditary transferable *property* in the lands or in the rents thereof," must be taken to be such talukdars as are described by Section 5 of Regulation VIII of 1793 who, at the time of the Decennial Settlement, might have engaged directly with Government for the payment of the public revenue assessed on their lands; and even after the Settlement, and until that right was taken away by Regulation I of 1801, might have claimed to be separated from the estate of the zemindar. He argues that the term does not include dependent talukdars whose tenures have been created since the Settlement, they being talukdars who, under the 7th Section of Regulation VIII of 1793, are declared not to have the *property* in the soil, but to be mere leaseholders.

Their Lordships are of opinion that there is considerable weight in the reasoning of Mr. Colvin, which receives some corroboration from that portion of the 14th Section of Regulation I of 1801 which declares that the rules regarding separable taluks contained in Regulation VIII of 1793 were never meant to apply to any new taluks constituted since the Decennial Settlement. Considering, however, that they have been referred to no case in which the clause now under consideration has received a judicial construction; that the question was not raised or considered in the Courts below; and that its determination is not absolutely essential to the disposal of this appeal, they abstain from expressing any further or more decided opinion concerning it.

They will assume that an auction-purchaser under Regulation XI of 1822 had the option of cancelling and avoiding such a talukdary tenure as that of Bishonath Roy, which Mr. Colvin claims for him. But granting this, they are of opinion that the power was one which he might or might not exercise; and that, in conformity with the principle of the decision in the Ranee Surnomoyee's case, (10 Moore's I. A.,) it was incumbent on the Government in this particular case to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure.

Their Lordships will, therefore, proceed to consider the second question raised on this appeal, viz., whether the Government has, in fact, exercised its power of cancellation whilst it was capable of so doing.

Mr. Colvin's letter being the expression of the views of the Board of Revenue, is not merely an able exposition of the law; it is also the best evidence we can have of what the Government, in February 1836, intended to do in respect of the dependent taluks forming part of this estate. Nor is it possible to read the last paragraphs of that letter, beginning with the 52nd, without coming to the conclusion that it was then the intention of Government, whatever might be their extreme rights, to make settlements with the talukdars of all classes, putting them, or at least all who were not specially protected against enhancement of rent, in the position which they would have held of *right* before 1822, viz., that of under-tenants entitled to retain possession of their lands during the subsistence of their tenure, subject to the condition of having their rents enhanced, according to the Pergunnah rates. The letter, no doubt, contemplated the exercise of the extreme rights of Government if the talukdars should not, within a certain time, enter into the new settlement. But the primary object of Government was to settle with the talukdars; and the if settlement were made, the tenures would continue to exist, though as taluks held at variable instead of fixed rents. Nor is it improbable that, considering the power and influence which the hereditary possession of land seldom fails to give in India, especially in a remote district like that in which this estate is situate, the Revenue officers felt that such an arrangement would be beneficial to Government as well as to the talukdars.

Do, then, the subsequent proceedings show that Government departed from this its original intention?

In considering these proceedings it should be borne in mind that the position of Government in one respect differed from that of an ordinary purchaser at a sale for arrears of Government revenue, inasmuch as the 36th Section of Regulation XI of 1822 expressly declares that an estate purchased by Government shall be subject to the rules applicable to the management of ordinary Malgoozary Mehals held Khas. By virtue of this enactment the Revenue Officers had over this estate in 1833 all the powers conferred upon them by Regulation IX of 1825, and by the provisions of Regulation VII of 1822, which by the 2nd Section of the former Regulation are extended to, and made applicable to, estates held Khas, and the other lands there mentioned. It follows that Government, though its rights either in respect of cancelling the under-tenures or of enhancing the rent were not higher than those of an ordinary auction-purchaser, may have been at liberty to assert those rights by a procedure not open to a private individual.

Their first proceeding was, however, one which every zemindar is bound to make, the foundation of a suit for enhancement of rent. It was the issue on the 7th June 1836 (Appendix, p. 31) of a notice under the 9th Section of Regulation V of 1812 claiming a rent raised at discretion to the sum of 5,000 rupees. This led to the proceeding of Mr. Allen of the 19th June 1837, (p. 104).

Great stress has, in the argument for the

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appellant, been laid upon this proceeding. Their Lordships, however, feel that in considering its effect they should look to its nature and not to expressions loosely used in it, such as "it be ordered that the taluk be set aside," or the like. And if this be done it will be found that it is nothing but an ordinary proceeding for the enhancement of rent against a person admitted to be in occupation of the lands. On such a proceeding it is open to the defendant to contest either the right to enhance at all, or the reasonableness of the rent claimed, or both without, however, admitting the reasonableness of the rent claimed if he expressly contests only the right to enhance. The talukdar in this case adopted the former course by asserting that his taluk was one at a fixed rent, incapable of enhancement even by an auction-purchaser. And the proceeding determined this point against him. It is, in fact, such a proceeding as Mr. Colvin in the 56th paragraph of his letter assumes to have been already taken.

Again, it appears that in July 1836, and, therefore, between the date of the notice and that of Mr. Allen's proceeding, the Government had given orders for the measurement and survey of the lands, (page 153, line 50). This shows that the rent of 5,000 rupees was a mere arbitrary claim made in order to try the right to enhance, and that the proceeding of 1837 determined neither the rent to be fixed nor the person with whom the settlement was to be made.

The measurement and survey were not completed until the Bengal year 1245; and on the 3rd September 1839 the Commissioner (page 153, line 53) wrote to the Collector that notice was to be issued to the talukdars to appear within fifteen days and make settlements for twenty years at the Pergunnah rates, and that if they did not appear ijarah settlements would be made *after annulling their rights*. These directions clearly imply that up to that time the intention of Government was still not to destroy the talukdary tenures unless the talukdars should finally refuse to engage at the Pergunnah rate.

Accordingly the notice at page 37 of the Record was issued to the heirs of Bishonath on the 5th December 1839. It invited them to come in and make a talukdary settlement within fifteen days, in default of which they were to be held not to have any rights as Putnee Talukdars of the late zemindar, or of possession.

From Mr. Money's proceeding (page 153) it appears that the respondent Obhoy Chunder did not come in under this notice to accept the settlement; that he still struggled either for a settlement at the old rate, or for delay; and that Mr. Money accordingly as Collector granted an ijarah for twenty years to a stranger, Sheikh Aeenoodeen. This arrangement, however, was subject to confirmation by higher authority, and from the recital at page 107 we learn that on the 24th November 1840 the Commissioner refused to confirm it *in integro*, and reduced the lease for twenty years to one for a single year. And at page 42 we have a further notice to the heirs of Bishonath, dated the 23rd February 1841, calling upon them once more, in anticipation of the expiration of the one year's lease to Aeenoodeen, to enter into a talukdary settlement at the Pergunnah rate, under pain, in case of default, of losing all right to the taluk.

The appellant relies much on the interruption, or assumed interruption, of the respondent's possession by the grant of this lease to Aeenoodeen. And if the original lease for twenty years had been confirmed, and possession had followed thereon, the inference that the old talukdary tenure had been cancelled would have been strong.

The Commissioner's letter of the 24th November 1840 was not, however, produced *in extenso;* and it is to be presumed that the appellant, who derives title from the Government, would have found means to produce it had it supported his case. Its effect, as stated on the record, coupled with the fact of the subsequent notice to the heirs of Bishonath, which treats their talukdary tenure as still subsisting, leads their Lordships to the conclusion that the lease for a year to Aeenoodeen was nothing but one of those temporary arrangements pending negotiations for a final settlement of the revenue which the Revenue authorities were, under Regulation IX of 1825, competent to make. Certain it is that the result of this second notice was that in 1841 the respondent, Obhoy Chunder, entered into the first engagement for one year, and in 1842 made the engagement for twenty years; and the kuboolyats and other documents executed on both occasions support the conclusion that those settlements were talukdary, and were made with him as representing the persons entitled to the hereditary possession of the lands under the old taluk granted to Bishonath, although their continuing tenure may not be described with strict accuracy as a Putnee taluk.

It is further to be observed that, if the Government had not effectually annulled the tenure before 1842, it had then lost its statutory right to do so, since Regulation XI of 1822, upon which that right depended, was repealed by Act XII of 1841; and that it is, therefore, unnecessary to consider the subsequent proceedings. The conclusion, then, to which their Lordships have come upon this part of the case is that the Government, whatever may have been its powers, did not, in fact, cancel or destroy the tenure, but left the talukdars in the position in which they would have been, as of right, under the old law, reducing their tenure from a taluk at a fixed to one at a variable

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rent. And it follows from this that the appellant, though he has the right to bring a suit properly framed for the further enhancement of the rent, is not entitled to disturb the possession of the talukdars, or to let the land over their heads to the highest bidder.

Upon the last question their Lordships think it sufficient to say that the suit being one between under-tenants claiming a right to the possession of lands of which they have been dispossessed, and their zemindar who disputes their right of possession, has, in their Lordships' judgment, been properly brought under the 6th Clause of the 23rd Section of Act X of 1859.

Their Lordships, therefore, being of opinion that no ground for disturbing the decree under appeal has been established, will humbly advise Her Majesty to dismiss the appeal with costs.

Decree for enhanced rent—Non-execution—Intermediate settlement between parties.

Appellant (a Maharajah) sued a talukdar for arrears of rent amounting to Rupees 77,854, and obtained a decree for Rupees 12,000 and costs. The plaint was based on a decree in an enhancement suit, by which it was directed that the rent payable by the talukdar should be enhanced to Rupees 10,185-10-0 per annum. This decree was not enforced save as to costs. The Maharajah put in his own agent to collect the money. The talukdar petitioned the Maharajah not to sell the taluk for non-payment of rent, promising to pay Rupees 2,000 a year. To this appellant assented by letter, though he afterwards contended that what he intended was that this payment was to be in addition to the enhanced rent decreed.

HELD, *confirming decision of the lower Courts, that by this petition and letter the parties had assented to a re-settlement of rent at the rate of 2,000 rupees; that the agreement therein contained was an agreement for re-settlement to continue until, at least, a more formal and definite settlement should be come to; and that it substituted the rent so fixed for that decreed in the enhancement suit.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Beerchunder Jobraj *v.* Ramcoomar Dhur and others, from the High Court of Judicature at Fort William in Bengal, delivered 21st February 1870.

Present:

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS is an appeal from a decree of the High Court of Judicature of Calcutta which affirmed a decree of the Collector of Zillah Tipperah. The plaint on the part of the appellant, the Maharajah, was for the recovery of six years' arrears of rent, amounting to 77,854 rupees and a fraction; the decree awarded him 12,000 rupees, treating a petition and letter, to which reference will be presently made, as a re-settlement of the rent. The plaint, which is dated the 20th December 1861, was founded on a decree in an enhancement suit, which is dated in 1848, and which, according to the terms of it, "ordered that the suit be decreed, and the annual rent of 10,185 rupees, 10 annas the defendants do pay, and the defendants be responsible for the costs of the suits." Summary execution of this decree, except as to costs, was refused, but as to costs it was granted; and under that execution for costs the taluk of the defendants (who are now represented by the respondents) was attached and lotted for sale. The appellant then instituted a regular suit to reverse the order refusing execution as to rent; this suit was dismissed. The appellant appealed to the Sudr, and the case was remanded for trial. On re-trial the case was given against the appellant; he again appealed to the Sudr, and that Court, with reference only to the construction of the decree of 1848, ruled that the meaning of it was to give the appellant an enhanced rent for 10,185 rupees, 10 annas for 1838. The date of this last decree was the 23rd August 1860. In the meantime, that is, before and up to 1856, a kroke sezawul was appointed by the appellant for the purpose of collecting rents; then there followed the petition and letter on which the decree complained of was founded. Shortly afterwards the appellant proceeded against the talukdar for non-payment of rent according to the agreement contained in the petition and letter on which order was passed for the sale of the taluk. The talukdar appealed, stating that there was no mention in the agreement for payment by instalments, and the order was reversed. At the close of the year, the appellant, instead of taking the 2,000 rupees which the talukdar had lodged in Court as his first yearly payment of rent on the footing of the petition and letter, took further proceedings for the sale of the taluk and obtained an order accordingly; the talukdar appealed, and the Court reversed that order by an order, dated the 3rd

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July 1863, which, so far as it is material, is in these terms:—

"On perusal of the whole of the papers of the case it appears that this case has arisen from an attempt to give effect to a private arrangement made between the parties for the adjustment of the sum due to the Maharajah, that is, the decree-holder. By this arrangement, 2,000 rupees were to be paid annually to the Rajah out of the proceeds of the debtor's taluk, and, if not paid, the taluk was to be sold in execution. But, at the same time, a remarkable portion of the arrangement was that the collections were to be made by the Rajah's own tuhsildar. If the onus of collections and remitting 2,000 rupees a year had been thrown solely on the talukdars, non-fulfilment by them of the terms accepted by them would have been rigidly enforced; but here the presumed default is with the decree-holder's goomastah (agent) and, therefore, it seems to be not just to visit the debtors with a responsibility which, it may be said, the Rajah took upon himself. It seems to me, therefore, to be the more proper course, under such circumstances, that when in any one year the payment falls short, the debtors should have notice of the deficiency, and should be required within a limited time to make it good; and, if the instrumentality of the tuhsildar should be dispensed with and the debtors would undertake to pay up annually the sum of 2,000 rupees, their failure to do so would render the taluk liable to be sold. I set aside the Principal Sudr Ameen's order, who will be guided by these remarks. The costs of this appeal will be borne by the parties respectively."

Pending these latter proceedings the appellant had instituted the suit in which the decrees from which he now appeals were made.

It was argued on the part of the appellant—first, that there had been default on the part of the respondent; secondly, that the effect of the petition and letter was *res judicata;* thirdly and principally, that the construction and effect of the petition and letter was that the defendant thereby agreed to pay 2,000 rupees annually, irrespective of, and over and above, the rent of 10,000 and odd rupees which it was said was the annual rent.

The facts stated are sufficient to show that there was no default on the part of the talukdar. The petition and letter were not taken into consideration or dealt with by the Court in any way antecedently to the time when the appellant proceeded on the footing of them, and obtained the decrees for sale of the taluk, which were reversed; and, though their effect was pleaded as one of the defences in the suit which resulted in the decree of the 23rd August 1860, there was no adjudication in that suit upon that issue. Therefore, it remains to consider that which formed the principal ground of argument, viz., the construction and effect of the petition and letter.

The rent of the taluk previously to the enhancement suit had been somewhat less than 500 rupees a year. The original suit sought an enhancement to the amount of 4,000 rupees a year. By a supplemental suit an enhancement was sought to the amount of 10,000 rupees and upwards. The rent of 10,000 rupees and upwards was never paid, or, unless the petition and letter can be held to have that effect, agreed to be paid. The enhancement decree was confined to the year 1838, and was unusual in form. The ordinary course of an enhancement suit is that the landlord gives notice of an increase of rent; to this the tenant may agree; if he does not agree, a suit for enhancement is instituted, the amount of rent is fixed, and then the tenant has the option of continuing at the increased rent, or going out of possession. In this case the appellant put a kroke sezawul into possession, and, while the kroke sezawul was in possession, the following petition was presented to the Maharajah:—

"Petition of Sree Ramcoomar Dhur, inhabitant of Mercotta, Pergunnah Noornuggur. It is submitted that in Chucklah Roshunabad, appertaining to Pergunnah Noornuggur, is a taluk in my own and my brother Joycoomar Dhur and others' possession, called after the name of Nundocoomar Chowdhry. After a decree was obtained by a suit being instituted on behalf of Sirkar (your Honour) for fixing rent, a kroke tuhsildar or sezawul has been appointed for collecting arrears of rent of the said taluk, and the said taluk has been lotted for sale for realizing the costs of the suit. Incarnation of virtue! there is no other means of paying off my debt, for costs of the suit, and for current and arrear rent, and the appointment of sezawul for collection entails heavy expenditure for collection, and owing to this the amount liquidated is very small. There is no profit to Sirkar (your Honour) by incurring expenses in this way; whereas I suffer much in supporting myself with food and clothing, and my debts are not being paid off. It is my prayer that, if the execution of the decree be stayed and if the tuhsildar acts in accordance with my views, then, by defraying a small sum for collection expenses, I can cause the sum of 2,000 rupees to be annually paid to Sirkar (your Honour) on general account, and besides that I can thereby manage to support myself. Therefore, it is prayed that, my petition being granted and the sale of the said taluk being prevented for the present, a letter be sent to the tuhsildar, to the effect that the said tuhsildar, by collecting the rental with my aid and advice, do annually pay to Sirkar (your Honour) the sum of Company's Rupees 2,000, on the joint account of costs of the said suit, and current and arrear rental of the said taluk;

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and from the amount surplus collection deducting collection charges according to list at Company's Rupees 21 per mensem, whatever balance will be left will be paid to me on receipt. If, anyhow, I cannot cause the said Rupees 2,000, exclusive of collection expenses, to be annually paid to Sirkar, (your Honour,) then I will not be able to raise any objection to the said taluk being put up for sale for the balance of my debt, deducting the amount paid. I, being present with the tuhsildar, will jointly collect the rental of the said taluk, and will endeavour, by all means, without any objection, to make payments in accordance with the aforesaid settlement. Finis. Year 1263 of Tipperah, date 16th Bhadro.

"P. S.—In regard to the condition which has been written of the annual payment of Rupees 2,000, if in any year any amount less than the above sum be paid, then, according to such writing, all such sums paid in every year will go to the payment of my debt for current and arrears of rent, and no portion of it will be put down to the payment of the costs of the decree."

The endorsement on this petition by the appellant's Mooktear was in these terms:—

"It is known that, owing to the petitioner having adversely put obstacles in the way of collections, the expenses in the Mofussil become very great, and owing to that collection, and payment is not made, and the petitioner having filed a lengthy petition in the Execution Suit, obstructs the sale. Under such circumstances, if, by bringing the petitioner under subjection and preventing the sale, and by giving a letter to the petitioner for assisting in making collections in the Mofussil, a greater sum than before, that is to say, the sum of Rupees 2,000 is annually paid to Sirkar, (your Honour,) then, instead of loss, it is a profit to Sirkar. Rather heavy expenses were incurred before by employing numerous men for the purpose of collection; now, if the petitioner can, by personal exertions, make more payment with less expenditure, and if, besides the said sum paid and collection charges, there is a surplus collection, then to pay that sum to the petitioner for his support is no loss to Sirkar, (your Honour). Therefore, it is ordered that a separate proceeding be written in this matter, and the execution of the decree being stayed for the present, the above intention be made known, by chittee, to the petitioner and the tuhsildar. Finis. Year 1263 of Tipperah, dated 16th Bhadro."

And thereupon the following letter was written on the appellant's behalf:—

"Letter addressed to Sree Ramcoomar Dhur, inhabitant of Mercotta, Pergunnah Noornuggur. This is the order, business as follows:—After a decree was obtained by instituting a suit on behalf of Sirkar (his Honour) for fixing rent of the taluk called Nundocoomar Chowdry, situate in the aforesaid Pergunnah, and in the possession of yourself and your brother Joycoomar Dhur and others, a Khas Tuhsildar was appointed for the realization of arrears of rent of the said taluk, and the said taluk has been lotted for sale for the realization of the costs of the suit. On this you have petitioned that there is no other means of paying off your debt for costs of the suit and rental, and by collections being made by the sezawul great expense is incurred under the head of charges for collection, therefore a very small amount is paid in liquidation. There is no profit to Sirkar (his Honour) by incurring expenses in this way; whereas you are in difficulty in obtaining food and clothing, and your debt is not being cleared off. It is your prayer that if the execution is stayed and the tuhsildar acts in accordance with your views, then you can cause the sum of 2,000 rupees to be annually paid to Sirkar (his Honour) by managing with a small sum for collection charges, and besides that you can manage to support yourself from the surplus thereof. Therefore, having granted your petition, I am going to give a letter to the tuhsildar by preventing the sale of the said taluk for the present. The said tuhsildar, by collecting rents with your aid and advice, will annually pay to Sirkar (his Honour) the sum of Company's Rupees 2,000 on account of costs of the said suit and current and arrears of rent of the said taluk; from the amount which will be collected over and above that sum, deducting charges for collection according to list at the rate of Company's Rupees 21 per month, the balance that will be left will be paid to you by receipt. If, anyhow, the said sum of Rupees 2,000 exclusive of collection expenses is not annually paid to Sirkar, (his Honour,) then you will not be able to raise any objection to the said taluk being put up for sale. You, being present with the tuhsildar, will make every exertion to collect the rental of the said taluk with mutual assistance, and to see that payments are made according to the above-mentioned fixed arrangement. Finis. Year 1263 of Tipperah, dated 17th Bhadro.

"Written by
"SREE NUNDOKISSORE BISWAS.

"P. S.—In regard to the condition which has been written of the annual payment of the sum of Rupees 2,000, if in any year a lesser sum than the above is paid, then, according to this writing, all such sums in each year will go to the payment of your debt on account of current and arrear rental, and, no portion of it being passed to the account of costs of the decree, execution of the decree will be issued for the realization of costs. Finis. 17th Bhadro, 1263 of Tipperah.

"Written by
"SREE NUNDOKISSORE BISWAS."

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The only evidence in support of the claim was the Enhancement decree; there was no proof of payment of, or of agreement to pay, the 10,000 and odd rupees, or of any facts from which such agreement could be inferred; the appellant had put his own agent into the receipt of the rents; the footing on which the petition was presented and the answer returned to the talukdar is plain from the endorsement of the appellant's Mooktear: it was "that 2,000 rupees a year could not be collected from the taluk;" on the face of the petition and letter the 2,000 rupees is for "current and arrear rent and costs," with a proviso that in case of default the payment is to be attributed to the arrears of and current rent; the appellant's agent is to remain in the collection to collect with the talukdar's assistance and to pay the surplus beyond the 2,000 rupees to the talukdar: this excludes the supposition of the 2,000 being in addition to, or exclusive of, the 10,000 rupees rent, and is, in their Lordships' opinion, the true effect of the agreement as it is to be collected from the two written documents, regard being had to the position of the parties at their date. This view is confirmed by the proceedings which the appellant himself took on the footing of the petition and letter, and the order of the 3rd July 1863. The agreement was an agreement for a re-settlement of rent which would continue at least until a more formal and definite settlement should be made. And it substituted the rent so fixed for that decreed in the enhancement suit. All that the appellant was entitled to on his plaint was given him, and their Lordships will, therefore, humbly advise Her Majesty to dismiss this appeal with costs.

[N. W. Provinces Cases.]

Grant of land on favourable tenure—Laches of Government—Construction of grant—

In 1819 *Government conferred on a Pindara Chief in lieu of a money allowance a grant of land to be held rent-free during his life, but subject to payment of a certain rent in the hands of his heirs. It was contended by grantee's heir that this grant comprised the whole of the twenty-seven villages of which the jaghire consisted. On the part of the Collector it was contended that the grant only extended to* 3,933 *beegahs of land which were then under cultivation. But the Government had long recognized the grant as consisting of the twenty-seven villages; and it was not until a new settlement in* 1862 *that they declared that the rent payable by the grantee's heirs extended only to* 3,933 *beegahs.*

Held, *that the terms of the sunnud clearly conferred the whole land on the grantee and his heirs, subject to a payment by the latter of an istimrar jumma of Rupees* 1,877-8-0; *that, however improvident the grant might be, it must be upheld; and that no suggestion of mistake or oversight on the part of Government was admissible, especially as the terms had been formally sanctioned by the settlement of* 1837.

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Sheikh Zuhooroodeen and others *v.* the Collector of Goruckpore, from the late Sudr Dewanny Adawlut at Agra, delivered 22nd February 1870.

Present:

Sir James W. Colvile.
Sir Joseph Napier.
Lord Justice Giffard.

Sir Lawrence Peel.

There is little, if any, dispute concerning the facts of this case. It is admitted that, on the 14th January 1819, Lord Hastings, the then Governor-General, executed in favour of the Pindara Chief, Kadir Buksh, the sunnud of which the construction has been so keenly contested, that the grant, whatever it comprised, was made in lieu of a money allowance of 300 Sicca rupees per mensem, which the Government had previously undertaken to pay to the Pindara for his support; that the lands granted by way of jaghire were to be held by him rent-free during his life, but were to be subject to the payment of Government revenue in the hands of his heirs and successors; and that in January 1822 Lord Hastings' Government, on the application of Kadir Buksh, determined that the lands comprised in the jaghire should on his decease be continued to his heirs to be held by them at an Istumraree Jumma of 1,877 rupees, 8 annas. The principal question in the cause is what passed by the sunnud. The appellants contend that the subject of the grant was the whole of Taluka Guneshpoor, which had been purchased by Government from one Motee Khanum with a view to its being granted to Kadir Buksh. The respondents assert that it was only 3,933 beegahs, part and parcel of that taluk.

Taluka Guneshpoor, as purchased by Motee Khanum at an auction sale and as conveyed by her to Government, consisted of twenty-seven principal mouzahs or villages; and to one or other of these villages were attached five Towfeer villages, of which the names do not appear either in the conveyance of Motee Khanum to the Government or in the sunnud. Each principal village, as the

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taluka originally stood, consisted of some cleared and cultivated land, and of a considerable amount of forest; and thus the twenty-seven villages amongst them included the whole of the forest land now in dispute. The cleared or cultivated lands were comprised in the 3,933 beegahs to which the respondents say the grant was confined, and these were scattered about the surrounding forest in the manner shown by the first of the maps in evidence, which is admitted to be a correct map of the whole taluka sold by Motee Khanum to Government.

Kadir Buksh was put into possession of his jaghire by a Government officer, Captain Stoneham, described as Superintendent of the Pindara Chiefs. He, by letter dated the 25th January 1819, brought to the notice of the Collector the five Towfeer villages, and stated that they had been represented to him to form part of the Guneshpoor Estate. It is difficult to read his letter without coming to the conclusion that it assumes the whole of that estate to have been granted to Kadir Buksh. The Collector also, on the 9th February 1819, announced to the Board of Commissioners (then the highest authority under the Supreme Government in the ceded provinces,) that Kadir Buksh had been put in possession of the Taluka Guneshpoor; and that the establishment entertained for collecting the revenues of the estate, whilst it belonged to Government, had been discharged. In 1821 there was a dispute between the Rajah of Nuggur and Kadir Buksh in respect of the boundary lands and jungle attached to the jaghire, which was decided in favour of the latter. This was followed in 1826, in 1834, and in 1835 by other suits in which the boundaries of Talooqua Guneshpoor and the right to forest lands on those boundaries were in dispute; and in each of these Kadir Buksh was successful, and was recognized as the proprietor of Taluka Guneshpoor, including all that had passed under that description by the auction sale to Motee Khanum and from her to the Government. The most important of these suits is that of 1826, because to it the Collector was a party; and the direct issue raised was whether the Towfeer villages were part and parcel of Taluka Guneshpoor. In the presence of the Collector they were decided to be so, and were treated as belonging to Kadir Buksh. Again, it appears that the title of Kadir Buksh to the whole taluka was recognized in the years 1836 and 1837 in various proceedings taken by the original proprietors under Regulation I of 1821 and Act III of 1835 to set aside or modify the auction sales. In these proceedings Kadir Buksh intervened as the actual proprietor of the whole of what had been sold at the auction sales, which were impeached. And, on the other hand, the Government did not intervene to claim or defend a title to any part of what had been so sold. The fact has been questioned by Mr. Pontifex, if not also by Mr. Forsyth; but on this evidence their Lordships have no difficulty in finding that from 1819 up to the time of his death Kadir Buksh was with the knowledge of the Government and its Revenue officers in possession of the whole taluka and was recognized as its owner in various judicial proceedings. Nor is there the slightest evidence that during that period the Government asserted a title to, or exercised any right of ownership in, the forests comprised in the taluk.

Kadir Buksh died in 1837, and his death was the occasion of proceedings wherein the then Government recognized still more unequivocally his title under the sunnud to the whole taluka, including the lands in dispute. Upon his death it became necessary to apportion the fixed revenue or jumma of 1,877 rupees, 8 annas amongst the different villages. This was done by a Mr. Chester, acting as Assistant Collector and Settlement Officer. It is admitted that the measurements of the different villages on which he proceeded included all the forest and other land in dispute, and that his settlement, in fact, treated the heirs of Kadir Buksh as the proprietors of the whole taluka, subject to a fixed revenue then to be apportioned among the twenty-seven mouzahs, or villages, into which the total area of the taluka (being 10,592 acres) was taken to be divided.

Nor can this settlement be treated as the act of a subordinate officer liable to error and acting in ignorance or forgetfulness of the history of the taluka. The smallness of the revenue attracted the attention of the Commissioner. He demanded an explanation on the 5th July, which was given by Mr. Chester on the 9th July 1838. The settlement went in due course to the Board of Revenue, was pronounced by it to be "fair, moderate, worthy of approval, and creditable to Mr. Chester," and, as such, was on the 14th January 1840 reported to the Governor-General, and so confirmed. It is hardly conceivable that, if the former Government had, by its sunnud, granted only a portion of the taluka, retaining its rights in large and valuable forests, there should have been no record of such retention in one or other of the various offices and departments through which this settlement passed with approval. Yet the present claim of Government rests on the assumption that the settlement proceeded on a gross and palpable error.

It is further remarkable that the alleged error was brought to the attention of the Revenue officers by the zeal of the ex-proprietors of the Guneshpoor Estate in proceedings extending over a period beginning in September 1843 and ending in February 1845. By petitions they brought almost the very case now made

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first before the Collector, then before the Commissioner, and finally before the Board of Revenue. Yet each of these authorities refused to recognize the error, and dismissed the petitions.

So things remained until 1862, when the point thus disposed of was again revived by Mr. White, a Deputy Collector on settlement duty in that part of Goruckpoor wherein this estate lies. It would appear by Act VIII of 1846, Section 1, that the previous settlement of Goruckpoor expired in July 1859, and it is to be presumed that Mr. White was employed in making the new settlement which then became necessary. It is to be observed, however, that the 3rd Section of the Act expressly declares that persons holding lands on special grants shall continue to hold them according to the terms of their grants. If, therefore, the whole of Taluka Guneshpoor was held by the respondents under the sunnud at the fixed jumma imposed by the letter of Government of January 1822, it was wholly out of the scope of new settlement which was then in progress. Mr. White, however, on the 9th of April 1862, in a paper more remarkable for zeal than for sound reasoning, communicated to the Collector his reasons for holding that the major part of the taluka was liable to resumption and full assessment as khiraji lands.

Assuming that the intention of Government in 1818 was to give Kadir Buksh nothing but a strict equivalent for the allowance of 4,000 rupees per annum, and proceeding also upon his own construction of the sunnud and other documents, he held that nothing was effectually granted beyond the 3,933 beegahs; that the fixed jumma was referrible only to that portion of the taluka; and that the rest remained liable to a fresh assessment of revenue, if indeed the respondents were entitled to be treated as in rightful possession of it, or as the parties entitled to engage for the revenue so to be assessed upon it. He charged Kadir Buksh and his representatives with having "dishonestly" enlarged the borders of the jaghire "by imposition and artifice," favoured by "a rare combination of chances," in which last phrase their Lordships conceive is included the remarkable consensus in favour of the appellants' title of all the Government officers, whether Revenue or Judicial, to whose notice the subject had been drawn during a period of more than forty years. The acts of those officers are accounted for by suggestions of error, mistake, or the omission to make due inquiry.

Mr. Bird, the Collector, to whom this communication was made, took the contrary view of the appellants' rights, and seems to have held that the former settlement could not be disturbed. He was, however, overruled by the Commissioner, whose decision was confirmed by the Board of Revenue, and the result was that by the Revenue authorities the taluka, *ultra* the 3,933 beegahs, was held to be subject to resumption and assessment of revenue at the current rates. The respondents thereupon brought their regular suit to contest these revenue awards, and to establish their proprietary right in the whole taluka under the sunnud at the fixed rent. But their suit was dismissed by the Judge of first instance, and his decree has been affirmed by the Sudr Court, both Courts holding that the claim of Government was well founded.

On the argument of this appeal the absurd and groundless imputations of fraud, which were cast by Mr. White's Report upon Kadir Buksh, have been very properly withdrawn. It was still suggested that the possession by the family in 1837 of great part of the lands then settled is to be accounted for by the hypothesis of accretion by means of gradual encroachment. Their Lordships can find in this record no proof that the family then possessed a rood of land other than that into the possession whereof Kadir Buksh had been put by Captain Stoneham, the Government officer, under whose superintendence he was placed. Of lands beyond the boundaries of the taluka, as it passed from Motee Khanum to Government, there can, on this suit, be no question. The existence of such, and their liability to assessment, must be determined in some other proceeding. The fact that the more recent measurements assign a larger area to the taluka than is shewn by the earlier documents is to be accounted for by the more accurate survey that preceded the thirty years' settlement of the North-West Provinces. The only questions for their Lordships' determination are—first, did the grant by the sunnud pass the whole taluka as it was purchased by Government, or only the 3,933 beegahs? secondly, was the perpetual jumma of 1,877 rupees, 8 annas, fixed by Government in 1822 upon the 3,933 beegahs, leaving the rest of the jaghire (if any) subject to future assessment? and thirdly, was either act (supposing the two former questions to be determined in favour of the appellants) the result of a mistake on the part of Government, which is capable of rectification in this suit?

The construction of the sunnud must, of course, be determined by the terms of the instrument. It is, however, not too much to say that where general descriptive terms such as "villages" or the like have been used in a grant, and both the parties have by their acts put a particular construction upon them, and rights depending on that construction have been enjoyed for many years, it lies upon those who impugn that construction to show that it is erroneous. How is this attempted in the present case?

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The Sunnud is in form a notification "that the villages comprised in the Taluka Guneshpoor, whether principal villages or dependencies, according to the subjoined details purchased by the Government, including all lands cultivated and waste, with fish and forest rights, have from the beginning of the autumnal season of 1226 Fusly been granted by the Government as a rent-free jaghire to Kadir Buksh in lieu of 4,000 rupees allowed him as maintenance under the orders of the Most Noble the Governor-General, dated April 10, 1818." And the subjoined details consist of an enumeration of the twenty-seven villages, showing under the head of "estimated area" areas aggregating 3,933 beegahs, and giving no specification of boundaries. The learned counsel for the respondents contrast this with the language of the conveyance from Motee Khanum to Government, (at p. 16,) which, after declaring that Taluka Guneshpoor, consisting of the twenty-seven villages detailed below, was by auction-purchase the property of the lady, conveyed "her ownership of the said villages, together with all the rights and interests, original and attached, having distinct boundaries, inclusive of all the lands, arable and not arable, forests, wells, ponds, tanks, and pools, rights of forests and fisheries, fruits, gardens, trees, both fruitful and barren, saline land, and the houses of tenants." And they rely much on the larger general words here used, and particularly on the word "forests," which was not to be found in the sunnud. They meet the argument founded on the other side upon the words "fish and forest rights," ("julkur" and "bunkur,") by saying that the term "bunkur" does not necessarily imply title to the soil of the forest in which it is exercised, since it may import rights to be exercised over the forests of another; and that even if taken in the former sense it may be understood to be the bunkur derivable from that portion of the 3,933 beegahs which by the statement of the 22nd August 1818, at p. 72, is shown to have been either barren or still uncultivated, though fit for cultivation. They further rely strongly on the words "according to the subjoined details," coupled with the schedule specifying only as the areas of the villages such as made up the 3,933 beegahs.

It appears to their Lordships that these arguments, though more or less plausible, afford no ground for cutting down the grant of Government to the 3,933 beegahs. The subject of the grant, like the subject of the conveyance, consisted of the twenty-seven villages described in each case by the same names. It is shown beyond a doubt by the conveyance, and by the earlier Ruqbabundee at page 10, and it has even been admitted in argument, that these villages, as conveyed by Motee Khanum, make up the whole taluka, as delineated by the first of the maps, and comprised amongst them all the lands in dispute. An Indian village or mouzah is not a mere village in the sense of an aggregation of houses or huts, with the land actually cultivated by its inhabitants. It is a division of a Pergunnah, and may, as in the present instance, consist of dwellings, of lands cultivated, and of a large extent of forest in which the rights of a zemindar may co-exist with rights belonging to the villagers. If, then, there be nothing else in the sunnud to show that the villages granted by it and by the former conveyance, under the same names, are in the one case the villages defined by their known and ascertained boundaries, and, in the other case, the same villages *minus* their appendent forest, the mere fact that the general words are somewhat larger in the one instrument than they are in the other goes for very little. Is it then a legitimate inference from the words "according to the subjoined details" coupled with the list of the villages that the sunnud granted only a portion of each village, and that a portion defined by no boundaries, and further that the whole subject of the grant was a congeries of unconnected plots of cultivated land scattered about the taluka of which they formed part, and separated by forest retained by Government. Their Lordships can find in the passages relied upon nothing which warrants so violent and improbable a construction of the whole instrument. The words "according to the subjoined details" are followed by the words "purchased by Government," which support the hypothesis that what was granted was that which had been acquired by Government; and since these latter words make the subjoined details equally applicable to the estate purchased by Government and to the estate granted by it, it follows that the schedule must be treated as an imperfect description.

The learned counsel for the respondents have also dwelt much on the improbability that the Government of 1819 would have granted property of such extent or value in commutation of an allowance of 300 rupees per mensem, and called in aid of their construction the official correspondence which preceded the grant. It was pointed out by one of their Lordships that this correspondence could not be legitimately admitted as a key to the construction of the sunnud. They may go further and say that it does not to their minds establish the antecedent improbability that such a grant should have been made. The estate had been purchased for a small sum: the frequency of the prior auction sales suggests a doubt whether, in its then state, it was equal to the payment of the revenue assessed upon it; it was granted rent-free only for the life of Kadir Buksh; there was at that time no stipulation that his heirs should hold it at a fixed rent; and the Indian Government, which was then, and for many years

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afterwards, notoriously careless about the forests, may at the time of the grant have contemplated that, as the forests were reclaimed, the estate in the hands of Kadir Buksh's successors would become subject to a progressive revenue. Be that as it may, their Lordships have no difficulty in coming to the conclusion that, upon the true construction of the sunnud, the whole of Taluka Guneshpoor, as purchased by Government, passed under it.

If this be so, it is necessary to consider whether there is any ground for holding that, by the Government letter of the 18th of January 1822, the Istumraree Jumma of 1,877 rupees, 8 annas was fixed upon that part only of the jaghire which had before the grant been assessed to revenue, leaving the rest subject to the liability to future assessment. Many ingenious arguments founded on the principles upon which the land revenue is from time to time assessed in the Upper Provinces under the regulations were addressed to their Lordships. But they are of opinion that these are beside the present question. The act of Government in fixing a permanent revenue on any lands comprised in the jaghire was, *ex concessis*, an exceptional act of favour, and a departure from the general revenue law applicable to that part of India. The effect of the letter is to be determined by its language, and that seems to their Lordships to be conclusive. It expresses the determination of the Governor-General in Council that the lands comprised in the jaghire should, on the death of Kadir Buksh, be continued to his heirs, to be held by them at the Istumraree Jumma. The jumma was to cover whatever was included in the jaghire. The grant may have been improvident; but, if made by the Government of 1822, it is binding on the existing Government, and was properly so treated on the occasion of the settlement of 1837.

Upon the last point little need be said. If, as their Lordships think, the whole taluka was granted and afterwards made tenable at the permanent jumma, it is clear that neither act of Government can be rectified in such a suit as this upon a suggestion of mistake. But it is difficult to see how such a case could be successfully raised in any suit. How is it possible, at this distance of time, to enter, as it were, into the Council Chamber of Lord Hastings to measure the motives which prompted an act of grace in favour of a particular family, or to determine that his bounty proceeded upon mistake and not upon an appreciation of the facts, of which all might, and but for the assumed carelessness of his advisers must, have been before him.

A good deal was said on both sides touching the conduct of Government in taking the proceedings which have led to this suit. Their Lordships fully concede that it is the right, nay, the duty, of a Government to protect the public revenue against unfounded claims to particular exemption from burthens to which the community is subject. But in the present case their Lordships cannot but think that the rash views of Mr. White were too readily adopted by his official superiors, and that the Government was thus committed to dispute on insufficient grounds the effect of former grants, of which the more liberal construction was supported by an undisputed possession of forty years, and had been formally sanctioned by the settlement of 1837.

Their Lordships will humbly advise Her Majesty to allow this appeal to reverse the decree of the late Sudr Court at Agra, and to order that, in lieu thereof, a decree be made granting to the appellants the relief sought by their plaint with the costs of the proceedings in both the Courts below. The appellants must also have the costs of this appeal.

Decree for land—Government in possession—Refusal to yield possession—

A decree of Court awarded five villages to plaintiff for food and maintenance, with mesne profits from date of action till possession. Government were in possession, and had raised no objection save as to a certain piece of the land. Civil Court decided against Government, but they retained possession and appealed.

HELD, *that the respondent's title had been confirmed by a Court of competent jurisdiction, and that Government were in wrongful possession.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of the Secretary of State for India *v.* Mussamat Khanzadee, from the High Court of Judicature, North-Western Provinces, Agra, delivered 1st March 1870.

Present:

SIR JAMES W. COLVILE.
THE JUDGE OF THE HIGH COURT OF ADMIRALTY.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THEIR Lordships are of opinion that there is no ground whatever for this appeal. The respondent's title rests upon the decree of the Commissioners, and it has not been alleged on the part of the Government in their pleadings or otherwise that that decree was other than a proper and binding decree. Their Lordships certainly see no reason why it should not be binding; the plaint on which it is founded is for actual possession of the land, but it is quite consistent with that plaint that a decree should be made, falling short of the extent to which the plaint went. The decree is in these terms:—"A decree is passed, assigning to the plaintiff "for her food and maintenance five villages in "Zillah Boolundshahur, equal in area, Government assessment, and income, to Mouzas "Lukhawlee and Soobee, and Ramghur and

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"Dowlutabad, of Pergunnah Seana; and "Seorampoor, Pergunnah Achar, which were "given in gift to Beebee Muriam, agreeably to "a deed of gift, dated the 22nd July 1854. "This decree is to be carried into execution, "and the plaintiff put into possession of the "villages; and she is, moreover, to receive the "mesne profits from the date of action brought "up to the date of being put into possession."

At the date of the decree the Government was in possession, and the proper person to give possession and to carry out this decree was the Collector. Their Lordships cannot at all come to the conclusion that the regulation or the circular, to which reference has been made, in any way affected the authority of the Collector. If the matter stood simply on the act of the Collector, their Lordships would hesitate long before they could accede to the view which has been advanced on the part of Government; but on turning to page 27 of Appendix, what actually appears is—that there were proceedings in the Civil Court founded on the decree—that the Government appeared in the Civil Court, raised no objection whatever except as to a certain particular portion of the land of which possession was given, and that there was a decision by the Civil Court against the Government, consequently the respondent's title was confirmed by the decree of a competent Court.

For these reasons their Lordships are of opinion that the Government was much in the wrong in taking possession as they did, and that this appeal never ought to have been brought. Their Lordships will, therefore, humbly advise Her Majesty that it be dismissed. The dismissal should be with costs.

SEASON REPORT.

NORTHERN SECTION.—There was literally no rain in Ganjam, Vizagapatam, Godavery, and Kistna. In Nellore there was only a slight drizzle.

Ganjam.—In Ganjam, *Horse-gram* and *Lamp-oil seeds*, which were harvested, yielded about half a crop. The standing crops, consisting of *Raggy*, *Gingelly*, and *Tobacco*, were in good condition.

Vizagapatam.—No particulars have been furnished regarding the state of cultivation in Vizagapatam, but the water-supply is stated to have been good.

Godavery.—Unseasonable winds in Godavery seriously injured the later dry crops and *Cotton* plants, and the yield of the several species of *Gram* was unsatisfactory. The cultivation of *Summer Paddy*, *Sugar-cane*, and *Gingelly-oil seeds* was progressing, and *Chillies*, *Tobacco*, *Onions*, and *Turmeric* were thriving. Pasture was good, and almost all the channels were open.

Kistna.—There was no further cultivation during the month in Kistna, and ryots were engaged for the most part in harvesting standing crops, which yielded well except in a few instances. The *Pedda Jonna* and *Pyra* crops suffered heavily from the attacks of insects, blight, and the previous excess of rains.

Nellore.—Dry crops over the greater portion of the district suffered from blight. *Kasari* and *Nallavari* crops were sown, and lands were prepared for receiving the *Sujja* seed. *Iswara Korra*, *Sannavari*, *Pesara*, *Horse-gram*, *Oil-seeds*, *Oolundoo*, *&c.*, were harvested in all the taluks with good results.

Prices fluctuated in Ganjam and Nellore, and ruled high in Vizagapatam, Godavery, and Kistna.

Public health was good in Ganjam and Godavery. In the other districts, fever and small-pox were of general prevalence. Cholera was reported from only one district, Nellore.

Cattle disease existed in all the districts save in Ganjam.

CEDED DISTRICTS.—There were no rains in this section, except a slight fall in the town of Gooty, in the Bellary District.

Cuddapah.—Lands were being ploughed, and the cultivation of the usual crops was progressing in localities where irrigation was available. The standing crops, except in the Voilpaud Taluk, were thriving, and the yield of crops harvested was generally good.

Bellary.—In Bellary, agricultural operations were in progress.

Kurnool.—Second-crop *Paddy* was sown in the Nundial and Cumbum Taluks of the Kurnool District. *White Jonna*, *Bengal-gram*, *Wheat*, and *Cotton* were harvested over the most part of the district, but yielded scantily owing to the damage sustained by the crops from blight.

Prices were almost stationary in Cuddapah and Bellary.

Fever was generally prevalent, and small-pox also in parts of Kurnool. Fever pills were administered with benefit in Bellary.

Cattle suffered from disease in parts of Kurnool and Bellary. In the latter district, medicines obtained from Dr. Thacker were forwarded to the affected localities.

EAST CENTRE.—There were no rains, with the exception of slight showers, in one or two spots.

Madras.—Crops were withering where irrigation from channels was not available. The cultivation of *Navarai* and *Raggy* was progressing all over the district, and that of *Indigo*, *Country Beans*, and *Gingelly* under wells and the Polal Tank, in the Saidapet Taluk.

North Arcot.—In North Arcot cultivation was confined to tracts, under wells and tanks, holding supplies of water. Standing crops looked well, but here and there suffered heavily from blight. A few dry grains and *Samba* and *Peshanam Paddy* were harvested; but most of the crops had previously suffered from the attacks of insects and blight, and their yield was, therefore, probably not more than half the average out-turn.

South Arcot.—Cultivation was progressing, and *Samba* crops and a few dry grains were being rapidly harvested.

Prices were almost stationary in North Arcot. In South Arcot, the advent into the market of the produce newly harvested brought down the prices below those of the previous month.

Cholera was reported from all the three districts of this section, and fever and dysentery from South Arcot and Madras. Their prevalence, however, was happily limited.

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Cattle suffered from disease in parts of North and South Arcot.

Cauvery.—There was little or no rain in this section.

Tanjore.—The Cauvery in Tanjore had almost dried up, and tanks held very moderate supplies. There was no fresh cultivation in *nunjah*, but some progress was being made in the cultivation of a few dry grains. *Samba Peshanam Rice* was harvested, and the out-turn reported to be generally good.

Trichinopoly.—The Cauvery and Coleroon were running low in Trichinopoly, and supplies in irrigating channels were maintained by the construction of temporary dams. The bulk of the *Samba Paddy* crops and the dry grains, *Dholl*, *Oolundoo, &c.*, were harvested with fair results. *Kodaikar* and *Gingelly* were under cultivation.

Prices fell.

Public health was good. There were very few cases of cholera.

Cattle enjoyed freedom from disease.

SOUTHERN SECTION.—No rains fell in this section.

Madura.—In Madura no freshes were received in the Vigay river, and *Cotton* and *Indigo* plants were affected by the absence of rains. *Nunjah* crops were harvested, and lands in some localities were being prepared for second-crop cultivation.

Tinnevelly.—In Tinnevelly, *Samai, Varagoe, Cholum, Oolundoo,* and *Gingelly-oil seed* were sown in dry, and *Brinjals* and *Onions* in garden lands. Standing crops were unhealthy, and the out-turn of harvested grains was below the average.

Prices declined

Cholera manifested itself in parts of Madura. In other respects the health of the districts was good.

WEST CENTRE.—No rain fell in Coimbatore and Salem. On the Neilgherries there was a slight fall.

Coimbatore.—In Coimbatore tanks and wells were drying up, and the store of water in river channels was diminishing. The *Manavary* crops dependent on the Noyel river were drooping; elsewhere the standing crops were thriving. *Raggy, Horse-gram, Samba, Cholum,* and *Tobacco* were harvested in parts of the district.

Neilgherries.—On the Neilgherries, *Wheat, Canjay,* and *Vendium* were reaped; and *Coffee* and *Plantains* were thriving.

Salem.—In Salem, *Cholum, Raggy,* and *Paddy* were cultivated with the aid of wells, and the standing crops were in good condition. *Paddy, Raggy, Horse-gram, &c.*, were harvested, but the out-turn was poor. *Cotton* and *Indigo*, the latter of which had been cultivated over a very limited extent of land, did not promise well. A large quantity of *Seed-Cotton* was notwithstanding picked in the Trichengode Taluk.

Prices rose on the Neilgherries, and were fluctuating in Salem.

Fever and cholera were prevalent in Coimbatore and Salem, but did not occasion any serious loss of human life. On the Neilgherries public health was good.

Cattle disease existed in parts of Salem and Coimbatore.

WEST.—The rainfall in South Canara was *nil*. In Malabar a few showers fell.

South Canara.—In South Canara the third-crop rice and dry grains were in good condition.

Malabar.—Preparations for further cultivation were being made in parts of Malabar.

Prices rose in South Canara, but remained stationary in Malabar.

Fever, small-pox, and cholera to a small extent affected public health in Malabar. In South Canara both men and cattle preserved good health.

Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency for the month of February 1870, *Fusly* 1279.

DISTRICTS.		PRICES OF GRAIN AND SEA SALT.												RAINFALL.				
		2nd sort rice.		2nd sort paddy.		Cholum.		Raggy.		Horse-gram.		Sea-salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Fusly		Fusly		Fusly		Fusly		Fusly		Fusly						
		1278	1279	1278	1279	1278	1279	1278	1279	1278	1279	1278	1279					
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam.........	285	247	118	100	188	145	166	120	174	150	289	322	...	...	...	...	...
	Vizagapatam..	332	285	147	110	202	153	205	159	183	142	254	308	...	...	...	...	...
	Godavery.......	275	235	126	103	150	131	145	113	169	182	241	276	...	...	...	...	...
	Kistna...........	362	317	165	142	161	185	148	138	201	236	277	319	...	...	...	...	...
	Nellore.........	377	343	178	159	173	155	136	140	208	290	262	340	...	0·30	0·04	...	0·08
Ceded Districts.	Cuddapah......	443	422	193	196	192	175	183	163	198	206	301	877	...	...	...	...	...
	Bellary.........	370	370	152	154	124	167	103	137	148	187	285	429	...	...	...	...	...
	Kurnool........	406	410	184	174	167	175	171	153	211	251	324	356	...	...	...	...	...
East Centre.	Madras.........	485	361	199	154	240	256	254	232	270	264	267	296	0·76	...	0·10	0·40	0·31
	North Arcot..	387	312	168	130	216	170	196	167	179	173	241	297	...	...	...	...	...
	South Arcot..	410	278	188	128	219	123	232	150	220	207	268	325	...	0·20	...	...	0·5
Cauvery.	Tanjore.........	351	266	152	124	199	115	158	114	222	208	251	306	...	...	...	...	...
	Trichinopoly..	391	272	180	117	164	129	187	128	233	188	290	356	...	...	...	...	..
Southern Section.	Madura.........	356	349	168	162	148	148	160	134	155	181	291	368	...	...	...	...	...
	Tinnevelly.....	400	361	186	172	224	240	166	151	227	228	291	361	...	0·18	...	0·12	0·06
West Centre.	Coimbatore ...	451	374	213	185	255	228	216	163	230	165	335	384	...	...	...	...	...
	Neilgherries..,	533	583	...	...	213	320	320	291	320	218	457	457	...	...	5·91	·51	3·21
	Salem...........	369	315	165	139	196	165	193	150	198	153	307	345	...	...	...	...	...
West......	South Canara.	328	346	149	162	...	...	208	212	276	265	254	285	...	...	...	...	...
	Malabar........	384	380	180	175	...	...	171	176	268	262	288	337	...	·18	...	...	04·0

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Statement of Cotton and Indigo Cultivation with their Market Prices for the month of February 1870, *Fusly* 1279.

	DISTRICTS.	Cotton.				Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo.				Market rate of Cake Indigo per Maund of 25 lbs.
		Fusly 1278.		Fusly 1279.			Fusly 1278.		Fusly 1279.		
		Extent.	Assessment.	Extent.	Assessment.		Extent.	Assessment.	Extent.	Assessment.	
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	6,405	11,645	7,189	15,484	151	30	30	30	30	65
2	Vizagapatam ...	14,897	37,979	13,121	26,915	149	4,202	24,058	1,670	8,446	48
3	Godavery ...	16,184	21,089	12,743	17,232	168	728	1,321	1,652	5,601	70
4	Kistna ...	1,76,580	2,54,524	2,43,098	3,45,698	155	9,401	18,419	21,879	46,447	60
5	Nellore ...	21,828	21,032	16,145	17,892	158	18,082	41,752	39,335	91,309	49
6	Cuddapah ...	661	855	3	7	120 to 166	239	833	3,776	9,195	40 to 70
7	Bellary ...	3,24,447	3,58,463	5,16,224	5,47,325	159	5,347	6,165	9,955	14,494	64
8	Kurnool ...	1,89,433	2,20,566	2,80,237	3,22,835	154	21,779	42,480	51,741	96,219	57
9	Madras ...	2	5	1	1	100	6,890	19,051	4,608	14,876	45
10	North Arcot ...	1,152	2,257	1,680	3,715	145	8,255	17,995	8,624	18,439	51
11	South Arcot ...	4,152	8,924	5,108	9,883	133	25,789	49,152	33,908	67,233	45
12	Tanjore ...	2,911	3,784	3,157	4,079	171	847	2,358	1,264	2,501	25
13	Trichinopoly ...	7,066	8,777	7,768	8,225	143	144	317	261	610	18
14	Madura ...	64,160	1,10,808	64,940	1,16,173	100	33	78	79	175	40
15	Tinnevelly ...	2,13,245	2,04,927	2,27,184	2,21,122	158	365	852	485	309	31
16	Coimbatore ...	1,12,414	1,17,779	1,20,663	1,28,514	146	......	......	......	......	30
17	Salem ...	12,076	17,870	14,532	20,711	206	933	3,655	1,418	6,291	41
	Total...	1,167,613	14,01,284	1,583,873	1,805,871	.....	1,03,064	2,28,016	1,80,685	3,82,175	......

Revenue Board Office,
Madras, 21*st March* 1870.

(Signed) A. MACGREGOR,
Secretary.

CIRCULAR ORDERS OF THE BOARD OF REVENUE.

No. V.

Standing No. 399-13.

Uncovenanted Servants applying for leave or pension in England to appear before Medical Board, India Office.

The Government of India have ruled* that Uncovenanted Servants who apply for pension or gratuity while on leave in England shall appear for examination before the Medical Board of the India Office, which sits every week.

2. Any application for superannuation allowance supported by a medical certificate other than from that Board will not be attended to.

* Resolution of Govt. of India, dated 11th January 1870, No. 174, communicated with Order of Madras Govt., dated 27th January 1870, No. 59.

No. VI.

Standing No. 404-12.

Arrangement of allowances in case of Uncovenanted Officers on privilege leave.

The Government of India have ruled* that Uncovenanted Officers whose salaries are not less than 100 Rupees per mensem shall draw acting allowance while on privilege leave, and that in cases where a substitute has been appointed both the substitute and the absentee shall draw acting allowance for the same period.

2. As the spirit of the leave rules is applicable to Uncovenanted Officers on salaries of less than Rupees 100 per mensem, the claims of such officers to acting allowance during absence on privilege leave should be decided upon in each case by the authority granting the leave, subject to any orders that may be issued by the local Government, to prevent any abuse of the privilege.

3. It should be observed that Standing Order, No. 404-10 is still in force, and applies to these cases.

* Letter from the Under Secretary to Govt., of India, to Accountant-General, Bombay, dated 11th December 1869, No. 3,105. Communicated with Order of Madras Government, dated 4th February 1870, No. 16.

No. VII.

Standing No. 370-3.

Collector not to interfere with decision of Subordinate under Section 76, Act VIII of 1865.

The High Court have ruled in Special Appeal, No. 209 of 1869, that Section 76, Act VIII of 1865 (Madras) prohibits the interference of a Collector, with any decision of a subordinate under that Act.

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MISCELLANEOUS.

FISCAL SCIENCE IN INDIA—AS ILLUSTRATED BY THE INCOME TAX.*

Although the subject which I have chosen for my lecture this evening is somewhat dry, I am not without hope that I shall succeed in interesting you therein. It is "Fiscal Science"—that is, the science of raising revenue. "Fiscal Science" in India—as illustrated by the Income Tax. I am not going to bore you with a scientific exposition of the subject, but to try if I cannot make you understand the injustice of the tax which has been devised to meet the so-much-talked-of *deficit*. It is not to make you disloyal or disaffected that I address myself to this task, but because the public welfare requires the spread of an intelligent conviction upon the subject throughout the country; and in the popular exposition of it, which I am about to make, I shall address myself through you to the whole public of India. The history of our financial administration in this country from the first is a record of mistakes, attributable in the first place to want of insight on the part of our statesmen into the circumstances of the country, and, in the second, to the want of a vigorous hold upon true fiscal principles. I will not weary you with a record of the errors that have been made, but some of them will be noticed incidentally as I get further on. I think I am more likely to secure the object I have in view by shewing you as clearly as I can the condition of things with which the Indian financier has to deal, and the fiscal course which such a condition suggests and requires.

As to the condition of things, then, with which our Finance Minister has to deal—the condition of things under which he has to raise £50,000,000 sterling a year, to meet the expenses of the State—I remark *first*, that it is totally dissimilar to the condition of things under which the Chancellor of the Exchequer has to raise £70,000,000 at home. Obvious as this is to the most careless observer, and universally admitted as it is, half the errors we have made as administrators of Indian finance have arisen from its practical oversight. Nine out of every ten Englishmen come to India full of the belief that English institutions, English modes of taxation, English laws, English manners, and English customs are so excellent that the sooner all other people adopt them the better. Now, English modes of taxation are about as applicable to the condition of things here as English houses. Look at this fact:—The poorest Englishman, as you know, must have tea from China, coffee from Brazil, sugar from Bengal, tobacco from America, wool from Australia, cotton from India, spices from Africa, spirits from France or Holland or from our own distilleries, and a plentiful supply of beer from the brewery. In technical language, the Englishman's "standard of living," his expenditure, is very high. On the other hand, the standard of living in this country—the expenditure of the people—is exceptionally low. The tastes of the people are exceedingly simple, while everything they consume is grown at their own door. The only articles of general consumption that pass through the Indian Custom-house, or are ever likely to pass through it, are piece-goods and metals. The total gross revenue we are deriving at this moment from the vast network of Customs' machinery, which stretches along our coast of 3,500 miles, is consequently less than £2,500,000! And, we shall never get much more. Custom-houses in India are but a wretched imitation of the fiscal system which has grown up in Europe under a condition of things totally different from what prevails here, or ever can prevail here. They find no difficulty at home in raising a vast revenue with great ease through the Custom-house. But why? Because through their Custom-house lies the highway of half a dozen products of the world's industry that are consumed by every man, woman, and child in the country. Thus they get a very large revenue (£3,000,000) from a small duty upon tea, because every one drinks tea; from coffee, because every one drinks coffee; from sugar, (£6,000,000,) because every one uses sugar; and so on. *A tax never draws well till it reaches the masses.* And because of this, the *only* important article in our Customs' list in India is piece-goods, which every man, woman, and child in the country uses.

We can never hope to get a revenue of any moment from customs. It is because of this that I have insisted so earnestly for these ten years past upon the danger of tampering with the one, great, inexhaustible source of revenue we do possess in India—*the land!* Gentlemen in Calcutta tell us that if we will permanently settle the land tax the people will show a power of consuming dutiable articles that will make us independent of the land tax. Well, I ask *what* dutiable articles? Is it to be tea they are going to consume, or sugar, or coffee? Why, you know they are all grown at their doors. Is it to be spirits? The 40,000,000 of Mussulmans *cannot*, and the masses of the Hindoos *will* not, touch them, and I hope never will. My quarrel with the men who are tampering with our land revenue is this, that, while they cannot point out a single article of any kind from which there is even a remote prospect of our getting revenue in India through the Custom-house, they would have us be content with their mere general assurances that we need have no fear upon the subject. India is a purely agricultural country, a country of peasant farmers and petty shop-keepers. Her vocation is to till the land, to produce food and the raw material of clothing for other lands as well as for herself. England, on the other hand, is a rich manufacuring country, a country of great landlords, merchants, manufacturers, bankers, lawyers, men of science, wealthy farmers, rich tradesmen, comfortable middle classes, and high-wage earning workmen, resting upon a sub-stratum of several millions of labourers and the very poor. In India we have a very small class of wealthy traders and bankers at our great commercial emporiums, an immense body of petty shop-keepers and artizans in the towns and villages, and then a vast agricultural community of small peasant proprietors and labourers, a people of the simplest wants, and the richest of whom find their highest pleasure in hoarding their wealth in silver, or covering the persons of their household with barbaric gold and pearl.

While, therefore, in the one country it is the

* Lecture delivered in the Town Hall, Bombay, before the Mechanics' Institute, on Monday, the 28th February. By R. Knight, F. S. S.

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easiest thing in the world to raise a large revenue by taxes upon the *expenditure* of the people, that is, upon commodities, in the other it is next to impossible to raise a revenue in such a way at all. You cannot tax the *expenditure* of a people who spend nothing but upon the necessaries of life and jewellery. If taxes are to be levied in India at all upon commodities, they must be levied on necessaries, for there is nothing else to levy them upon. Well, we levy a somewhat heavy tax on salt and another upon spirituous liquors; but,as the masses of the people do not touch alcohol, our spirit tax (Abkarry as we call it) produces comparatively little. You see, then, how absurd it is for our financiers to dream of getting a large revenue in India from taxes upon commodities, unless they are necessaries of life. For no tax ever becomes productive till it reaches the masses. It is of no use to tax commodities that are consumed only by a few wealthy natives who have acquired European tastes and habits, because such taxes produce nothing, let them be as heavy as they may. A tax never draws well till it touches something that everybody consumes, and then a very small tax will yield a very large income. Thus, we might obtain an immense revenue from a tax of one rupee only per candy upon corn if it were possible to levy it. The quantity of grain consumed yearly by each one of us upon the average is about a Bombay candy of five hundred weight, and, as we are one hundred and thirty millions in number, a tax of one rupee per candy would plainly yield £13,000,000 sterling a year. On the other hand, you may put as heavy a duty as you please upon champagne; but, as it is only the English in India and a few wealthy natives who drink it, the tax will yield nothing. Indirect taxes in this country are, therefore, impossible, unless we are to tax necessaries of life, while at home they are the very mainstay of English finance. Out of a total revenue of £70,000,000 a year, the Custom-house and the Excise Office yield between them £42,000,000, while the Post Office, the Stamp Office,and the assessed taxes, all representing to a large extent *indirect* taxation, yield £15,000,000 more.—£57,000,000 out of £70,000,000.

But if the condition of things here forbids the hope of our obtaining a large revenue in such modes, still more clearly does it shew the hopelessness of such taxes as an income tax, belonging to the other great division of taxation commonly called *direct* taxation. Out of the £70,000,000 sterling of revenue raised in England, the highest amount ever obtained there within the last fifty years even in time of war, from the Income and Property tax, was the £16,000,000 sterling raised in 1856 to meet the expenses of the Crimean war. But now mark the condition of things under which taxation by the direct method is levied in England. In England,then, to begin with, the ownership of the land has passed from the State into the hands of private persons. The result is that we have a small class of enormously wealthy families living in graceful idleness upon the rental of the soil. The net value of the property belonging to the private landlords of the United Kingdom is estimated at £2,000,000,000 sterling. In the next place, we have what is called the monied class, the mortgagees, fund-holders, and railway proprietors of the kingdom, the net capitalized value of whose property is estimated at £2,700,000,000. And in the third place we have the merchants, bankers, traders, and wealthy farmers of the kingdom, possessed of an estimated capital of £1,300,000,000 sterling. The total value of the real and personal property of the United Kingdom is the vast sum of £6,000,000,000 sterling. This estimate is based upon the income tax returns, and is, therefore, considerably below the real amount. And this vast property is held in comparatively few hands. There is, first, the small class of landlords whose ancestors in the remote past obtained upon one pretext or other from the Crown a right of ownership in all the lands of the country. The class cannot be hidden; but stands out prominently, challenging attention as legitimate subjects of direct taxation. They have got possession in some way or other of the land of the country, and are holding by no title, when searched to the bottom, but that of prescriptive right. There is, in the next place, the monied class, standing as prominently before us in the cities as the landlords in the counties, challenging also equally with them the attention of the tax-gatherer. And lastly we have the great body of merchants, capitalists, farmers, and wealthy tradesmen of the country, all men of mark in their neighbourhood, living in a certain style, and concerning whose means every one is able to make a satisfactory estimate upon the whole.

Now, when we turn to India, how different is the field. If there is one part of India, gentlemen, in which it is of great importance that an income tax should be levied with success, it is Bengal. For we cannot reach the masses of that province through the Custom-house any more than the masses in other parts of the empire, while we have unfortunately abandoned to its zemindars, after the English example, the land revenue which the State was bound to retain in its own hands. There is nothing left for us, therefore, in Bengal, but the attempt to obtain, by a direct tax of some kind or other, the revenue which we have sacrificed by the land settlement. If there is any province of the country in which we might hope that such a tax would be successful, it would be Bengal with its landed proprietors, its rich and varied productions, and its vast commerce. Well, we have twice essayed the experiment within the last ten years—and what are the results? The tax is a deplorable failure. When we look closely into the condition of the people, it is easy to see why the tax is a failure. Throughout the whole province, with its 40,000,000 of people, the general poverty is such that only 21,000 incomes were returned at above £100 a year to Mr. Wilson's Income tax, and only 64,000 at more than £50 a year. Under the present Certificate Tax, which goes down to incomes of £50, the total number of assessees during the last year was less than 73,000, of whom only 44 (and 35 of them were Europeans) were assessed upon incomes of £1,250 a year and upwards. How hopeless is the levy of such a tax under such circumstances? The returns for all India, with its 130,000,000 of people, under Mr. Wilson's income tax were—

53,000	incomes	of	£100 and upwards
141,500	do.	of	£50 to £100
and 500,000	do.	of	£20 to £50

The great supporter of the tax in the Indian Press has ever been the *Friend of India*; but even that journal, while still contending that the tax

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should be retained, admits that "the fact seems established that no direct income tax should touch incomes below Rupees 1,000 a year." The staunchest advocate of the tax would thus have us confine its application to some 50,000 persons out of a population of 130,000,000, while to reach even this small class we must go as low as incomes of £100 a year. The *Friend* is a poor authority at the best, and in making this recommendation has quite forgotten the axiom that "direct taxation founded on extensive exemptions is only another phrase for confiscation." The proposal is simply that the 130,000,000 should force 50,000 of their number to build railways and make roads for all. For only 53,000 persons in all India were returned under Mr. Wilson's tax as possessing incomes of more than £100 a year. Turn to the United Kingdom from which this device was borrowed, and see how it applies there. Out of its small population, then, of 30,000,000—only one-fourth or fifth of our number—we have

995,688	persons with incomes		of £100 to £300
173,036	do.	do.	of 300 to 1,000
47,228	do.	do.	of 1,000 to 5,000
8,048	do.	do.	of 5,000 to £400,000
1,224,000			

Let me recal our own statistics once more for immediate comparison—

141,500	persons with incomes		of £50 to £100
53,000	do.	do.	of £100 and upwards.
194,500			

With figures like these staring us in the face, is it not amazing that this income tax notion should still be encouraged? It is wholly unsuited to the circumstances of the country, and is possible only upon the principle of exempting 999 persons out of every 1,000. And yet this is the tax to which Calcutta has been looking for years as the future backbone and mainstay of Indian finance when it has got rid of the land revenue. Were we to strike out of the schedules at home every man who is there thought rich enough to be assessed at all, we should still have in the residual incomes alone a field for the levy of the tax infinitely more promising than we have here. To begin with, there are 1,535,000 incomes derived from actual property averaging £55 a year each, which the income tax does not touch. Then, we have 1,345,000 artizans, earning £50 a year each, whose incomes also are untouched. Thus there are three millions of exempted incomes of £50 to £55 a year each against 194,000 assessable incomes in India, three-fourths of which range from £50 to £100 only. The 3,000,000 of exempted incomes at home if subjected to Mr. Wilson's tax would yield £5,600,000 a year, more than three times the amount which the tax yielded in India. Still below these exempted incomes at home there are nearly 10,000,000 of incomes derived from wages averaging £27 a year each. It is the fact that the incomes which we exempt at home as too low to be assessed at all offer a far richer field for the levy of the tax than the incomes of all India taken together. As a matter of fact the classes which at home pay the income tax have no existence here. We have individual men of such classes here and there at wide intervals, but the classes as classes have yet to be created. Thus in England we have upwards of 8,000 men with incomes of from £5,000 to £400,000 a year each. Throughout the whole of the North-West Provinces, with its 24,000,000 people, we have just 13 representatives of this class, the wealthiest of whom has not £40,000 a year. In England we have nearly 50,000 men with incomes of from £1,000 to 5,000 a year each; in the North-West Provinces, we have but 300 specimens of the class, of whom 23 are European officials. In England* we have a vast class of 174,000 men with incomes from £300 to £1,000. In the whole of the North-West Provinces there are not 2,000 men with such incomes. In England we have a million of men with incomes of £100 to £300 a year each; in the whole of the North-West Provinces there are not 7,000 of such incomes. In England, finally, we have nearly three millions of exempted incomes above £50 a year each, while in the whole of the North-West Provinces not 25,000. If the income tax at home went down as low as the certificate tax does here, it would reach more than 4,000,000 of persons possessing an aggregate income of £512,000,000 sterling a year. In the North-West Provinces it reaches just 34,294 persons with an aggregate income from twelve to fifteen millions sterling. In such circumstances an income tax is the greatest folly in the world. It cannot be productive, for it touches only one in a thousand of the people, while the fact that it reaches no more makes its injustice as patent as its folly. For direct taxes based upon the exemption of the many are simply confiscation, call them by what name you please. "Every man of authority upon financial subjects," says Mr. Gladstone, "agrees that the odious features of the income tax cannot by any means be removed or modified;" while in India the special objection lies against it, that it is necessarily founded on the exemption of 999 persons out of every 1,000, making it but another phrase for confiscation.

In these circumstances, gentlemen, the raising a revenue of £50,000,000 sterling a year, if we had nothing but taxes to depend upon, would be a task that might well dismay the most sanguine of statesmen. But the second peculiarity in our condition is that the commonwealth of India is not dependent upon taxes, as is the commonwealth of England, for the yearly expenses of the State. The commonwealth of India, instead of depending upon an income drawn from the Custom-house and the Excise Office, owns an enormously valuable property, which year by year returns it an income sufficient of itself, were it but properly looked after, to meet all the legitimate expenses of the State. The grand peculiarity of our condition, "that which distinguishes us from all the kingdoms of the western world," is this possession. And it is the tampering with this possession by Calcutta financiers that has been the chief subject of all my anxiety as a public writer for the last ten years. It is the tampering with this possession, this national property, that has necessitated the income tax, and this alone.

The Government of this country is entitled by immemorial usage to take a rental from the land,

* When the lecturer says "England" he must be understood to mean the United Kingdom.

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or, what was known under our predecessors' rule, as the *khiraj*. This impost by Mahomedan law might extend to one-half the produce, but could not exceed that proportion; in practice, a third or a fourth only was taken. In other words, the commonwealth has an old prescriptive right to share in the produce of the soil; a share that might reach to one-half, but in practice seldom exceeded one-third, of the gross produce of the land. I hope you understand that this was the condition of things which we found in India. We found that the State had reserved to itself a right, from time immemorial, to a certain proportion of the produce of the land. The State had no right to the *soil*. It could not dispossess one tenant to put in another at a higher rental, for the soil belonged to the occupier, who could do with it what he liked, so long as he paid the State its share of the produce. When a ryot sold his land, he sold it subject to the State's claim upon it; in other words, he sold a right to enjoy for ever two-thirds of its produce. The remaining third was not his to sell, and never was his. Whether the State share represented the true rent of the soil or not, was an accident. I am inclined to believe that it fell short of that rent as a rule. Now, this was the condition of things we found here, and economists all agree that it is the happiest of all possible arrangements for a people to live under. But at this moment we have every where, except in Bombay perhaps, lowered this claim almost to the point of abandonment. The land has risen so greatly in value within the last five-and-twenty years that, instead of one-third, it is doubtful if we are taking upon the average one-thirtieth of the produce for the State share. We are virtually abandoning all claim to anything but a quit-rent of the soil throughout all India. We have abandoned to the cultivator that share in the produce which, before we came, was reserved for defraying the expenses of the Government. In so doing we have clearly conferred an enormously valuable property upon the cultivator, to which he had not the remotest title or right. The State has ceased to be the landlord, having abandoned to the cultivator the whole margin of profit which lies between our light assessment and the rental of the fields. Take the case of a ryot holding a thirty years' lease in the Central Provinces. The man has what is called a right of occupancy, and his "lease" is an assurance that the Government assessment shall not be raised for a generation of years. He can do what he likes with his land. His right is heritable, and transferable, and perpetual. The State cannot oust him, and all improvements upon the land are his for ever. He is simply liable at the end of thirty years to find the quit-rent he is paying somewhat increased from a general edict falling upon the whole taluka. Where he is now paying a quit-rent of 6 annas an acre he may perhaps have to pay by and bye 9 annas. He is the real landlord. Now, if we could get at the hoards of these men for the purpose of making the roads and canals which they have too little enterprize to make for themselves, it would plainly be good policy to tax them for the purpose; but to tax the *urban classes* for such works, who have no interest in the profits arising from the outlay, is simply monstrous. On this ground I have ever condemned the income tax in India, because it is levied to sustain a great public works expenditure. If we are to settle the land tax at its present rates, then must we cease *all* expenditure upon public works for improving that land. For all that we are now taking from the land is a quit-rent, the proceeds of which go to defray the expense of administering the laws. To undertake public works for improving the land, out of an income tax upon the cities, is simply preposterous.

We have already conferred upon the occupiers of the land an enormously valuable property, which belonged of right to all classes in common, urban as well as they. And we are now required to add to that value by an indefinite outlay upon railways, roads, canals, and I know not what else, for the improvement of land, our title to which is gone. And we are to do this out of a direct tax upon our incomes! To shew you to what an extent this sacrifice of State rights is being made, I have here with me the very latest report issued of a land settlement—the Raepore Settlement in the Central Provinces. We have in this Raepore report the latest illustration of what is going on, and I beg you to mark carefully what it reveals. First of all, then, Raepore is a land of plenty, where want is unknown, and the rainfall never fails. The district is the granary of the cotton-growing people of Nagpore; but is somewhat remote, and cheap communications, tramways, or canals are required to show the real wealth of its resources. The staple food of the people is rice, and their standard of living exceptionally high for this country. The very cattle find Raepcre a sort of paradise. "The richer ryots feed their "plough-bullocks and bullocks during the hot "months, giving each animal from 2 to 3 seers of "oil cake or dhall daily and about 20 bundles of "grass, and the buffaloes continue to be fed "throughout the year." The total area of land under cultivation is 1,866,924 acres.

Now, the rental which the Commissioner proposes to levy upon this land for twenty years to come is Rupees 658,708, or about 5¼ annas per acre. You will ask, what is the value of the crops? Upon this point the report is exceedingly full and valuable. It gives as the acreage of each crop grown the average produce which each crop yields and the gross money-value of the whole harvest. I cannot give these returns in detail, but they shew that the total value of the crops is Rupees 1,62,22,163 a year. Thus the annual harvest and the annual assessment are—

Harvest..................	Rs. 1,62,22,163
Assessment.............	„ 6,58,708

In other words, we are going to commute all claim for rent and taxes for twenty years to come upon this wealthy people for a sum equivalent to about 1-27th of the value of the annual produce of the land. The assessment in point of fact is not one-fiftieth of the harvest. For, to be on the safe side of matters, they have computed the value of the staple crops throughout at a third or fourth of their real value. The single harvest gathered in Raepore in the last 12 months will suffice to pay the whole 20 years' assessment three times over. The value of the harvests I say of the last 12 months alone must have been three times that amount. There are no middlemen in Raepore to take the profit. The ryot gets it all. It is simply impossible to carry on the government upon such principles. How can we, with justice

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to the rest of the empire, commute the State demand for taxes for twenty years to come upon a wealthy people like this, on terms so preposterous? It is a manifest injustice to the rest of the empire to do so. It is an injustice to Raepore itself so to do. For the great want of Raepore is communications with Nagpore. A canal, or efficient tramway, between the two districts would double the value of the harvests at once, and it is simple insanity to deprive ourselves of the means of opening such communications.

The same ruinous settlements have been made throughout the whole of the Central Provinces, which comprise much of the richest soil of India. Their population is about 10,000,000 of people. The cultivated area is 12,400,000 acres with 2,500,000 acres of grazing land. The value of their crops is at least £25,000,000 sterling. Our public works expenditure therein (including railways) in the last eight years has been about £8,000,000, the interest alone upon which is about £400,000. In any other country of the world the rental of the land would be about £8,000,000, while Calcutta has done us the service to fix it for 30 years at £550,000 a year, or little more than the interest upon our public works expenditure therein since 1860.

The result is—as we can tax them in no other way—that these provinces will be a drag and drain upon the rest of the empire till the close of the century. In the North-West Provinces the same sacrifice is being made. The average assessment according to the last returns is but Rupees 1-10-1, or 3*s*. 3*d*. per acre, somewhat less than it was 30 years ago, when the average rate was Rupees 1-12-1, or 3*s*. 6*d*. per acre. Now this old North-West rate was fixed at a period of unprecedented agricultural depression, and was based upon the fact that the average price of wheat (the staple food of the people) during the ten years preceding the settlement had been 66 lbs. the rupee. The assessment was avowedly moderate—was intended to be moderate—and was paid with ease. During the 30 years that have since gone by we have given the provinces a vast system of irrigation, and have sent railways at enormous cost through the provinces. The amount spent on public works in the provinces is fabulous. Money, meanwhile, has fallen to half its old value, while the prices of produce—partly from this cause, and partly from the growth of a vast export trade—are three times what they were. Thus wheat has been for 12 months past 18 to 20 lbs. the rupee. The result of all this is that the cultivating classes have grown very wealthy. They have virtually been made, as you see, the owners of the soil, the State abandoning to them the rental which, before our time, was appropriated for the expenses of the administration. At this moment the old leases are falling in, and, were the new assessment based upon an enlightened regard for the altered condition of things in the country, we might double the rental throughout the provinces. The considerations I have pointed out make it as certain as any thing in human affairs can be that we might do this without the slightest oppression, and without interfering with the progress or well-being of the people in the least. And let me tell you what that means. It means an increase of £4,000,000 of revenue a year, about three times the produce of Mr. Wilson's general income tax when at its highest amount of 4 per cent.

Again, the modern land settlements of the Madras Presidency are being made for 30 years upon the assumption that the price of paddy is, and will remain, £2-0-7 per ton, whereas the real price for years past has been two or three times that rate. Now it is these proceedings which are the cause of all our embarrassment, and of the necessity of this new income tax. We are fixing the land revenue for long periods of time at these absurd rates, while committed to an indefinite outlay upon public works for improving the value of the land. Our finance is in the hands of men who are simply blind.

I do not think I should have chosen this subject for my lecture this evening but for the strange neglect of our publicists to deal with it. Until my own protest appeared against the measure,—in the shape of my letter to Earl Mayo, which has been so much cried out against, but which has done its work,—the press of India was meekly bowing its neck to the imposition of the yoke. I cannot but think that it should have acted very differently, and that public meetings should have been called in every city in the empire to protest against the tax; for I despair of seeing Indian finance administered upon broad and comprehensive views until the *Council Chamber* at Calcutta reflects the enlightened convictions of the public mind. The most important work which the Indian Press now can do is to spread exact information upon the subject; to educate the country in right views thereon. I have no sympathy with ignorant impatience, but still less with the ignorant *imposition*, of taxation. It is the duty of every citizen to resist such taxation with his whole might. For all taxes more or less interfere with, and embarrass, industry; and we are bound to hand down to the generations, which shall come after us in this country, unimpaired, the great inheritance to which we have ourselves succeeded—*the State rights in the soil.* I have shown you how largely these rights are being tampered with, and the injury inflicted upon the commonwealth thereby. Throughout Bengal, Behar, Orissa, and a part of the North-West and of Madras, the State inheritance is lost, and the sacrifice would have been universal, I believe, but for my own personal, persistent, and passionate efforts. For I have seen clearly that the surrender of the land revenue of the country now, or at any time, as the *London Times* said some years ago, will be "*the sacrifice of the one single opportunity left in the world of carrying out in practice the dream of the political economist in the maintenance of a community with entire justice and without waste. From the first hour, when the philosophy of administration has been understood, it has been admitted that the true source of State revenue is the land, and the only sound policy is to preserve the land as the property of the State.* The land is the one species of property which necessarily and perdurably increases in value by the mere growth of society, and which can, therefore, be charged with the support of the State, precluding all burdens upon individuals, and precisely adapting itself to the demands upon it. *The misfortune of all the western kingdoms of the world has been, that this discovery was not clearly made till the practical application of it had become impossible*, through the appropriation of the soil as private property; and when India

"came into the hands of our fathers they found "themselves in possession of *the one opportunity* "*left in the world for carrying on government with-* "*out taxation, and without the necessity for ever* "*instituting taxes.*"

It cannot be too often repeated that we have but *one* source of revenue in India, and that it is the tampering of Calcutta officials therewith that produces all our embarrassments. We have but *one* source of revenue on which we can count with reasonable certainty to meet the heavy liabilities we are incurring in the prosecution of works of public improvement. Happily, that *one* source of revenue is not only sufficient for all the wants of the State; but, by consent of all authorities on economic science, it is the very best source of revenue a nation can possess. And yet against this one source of revenue, upon the preservation of which the future well-being of the country throughout all time depends; against this one source of revenue, to which neither social, nor economic, nor political objection of any kind exists, Calcutta financiers to a man have for years been arrayed. Before the mutiny they were the exponents of a financial policy the very opposite of this new one. *Then* not a freehold acre of land in the country was to be tolerated; *now* the land is to be everywhere settled at a quit-rent, and the right of the commonwealth to share in its improved value to be abandoned to the cultivator for ever. I am not misrepresenting these, gentlemen, in the least. Calcutta financiers, as a body, have shewn for the last ten years an incessant disposition to tamper with the land revenue, and cannot be made to see that *two* things go to make up a policy of public works expenditure by the commonwealth. If these works are to be constructed by the State, it can only be upon the understanding that the commonwealth is to share in the improved value of the soil. The problem which Calcutta has set itself is an impossible one, and, the attempt to solve it by an income tax involves a grievous wrong to the urban classes of the country. For you cannot settle the tax upon the land at the old rates while incurring enormous liabilities for increasing its value. What these Calcutta gentlemen are forcing us to do is to improve the land out of the proceeds of an income tax upon the cities, or the salt tax upon the labouring masses. Our rule has conferred upon the cultivating classes rights in the soil, unknown before our time, of immense value; and now to dream of undertaking public works for improving their land out of the mere quit-rent which we are receiving therefrom, and which is absorbed in the cost of our ordinary administration, is simply, I say, preposterous.

If the income tax is to be maintained in any shape whatever, it should be made to fall upon the classes for the improvement of whose property it is levied. My strongest objection to the income tax is, that it is levied for the advantage of certain classes who are already enjoying an annual bounty from the State. For, I repeat, again and again, that if we require an income tax at all, we require it not to defray the expenses of the administration of justice amongst us, nor for the interest upon our debt, nor for the maintenance of any part of the national establishments. We require it simply for the purpose of prosecuting public works; for the improvement of the land; or, what is the same thing, paying interest on the loans borrowed for that purpose. Throughout Bengal, Behar, Orissa, a part of the North-West Provinces, and Madras, as I have said, we have divested ourselves of all right whatever to share in the future value of the soil. By the Permanent Settlement conferred upon the landed classes of these provinces we have, in effect, said to them, "Although "entitled to take one-half the produce of your "land, we commute that right for all time into "a demand of one-twentieth only. Take the lands "as your own, and bless the Government which "confers upon you this splendid inheritance." So far all is intelligible. The State makes a transfer—which it has no right to make—of public property to a class that has no more equitable title to it than you or I have; and all other classes are required to acquiesce in the arrangement. Some persons foolishly profess to expect great political good from the transfer,—but is there one intelligent person in India who is prepared to pay an income tax, the proceeds of which are to be laid out in improvement of this property? Is it not enough that we are deprived of all right to share in its future value—that we are to be taxed to increase it? Absurd as the situation is, such is the exact position in which we stand towards this income tax. The zemindars of Bengal are in urgent want of roads; for, notwithstanding the innumerable water tracks which pervade the lower provinces, there is no part of India "where "communication by means of good roads or "navigable canals is so much wanted." Then again they want canals, for the soil there is "of "that nature that, as soon as the moisture is "evaporated, (which a few days after the waters "subside are sufficient to accomplish,) the face of "the earth becomes so indurated that it resembles "a surface of rock intersected by fissures, *its* "miniature ravines being such as no tender plant "can perforate." We have already constructed the East India Railway largely out of taxes for the benefit of these zemindars, whose lands it has immensely increased in value, and we are now to construct for these poor fellows a system of good roads throughout their lands, and a few hundred miles of navigable canals! If an income tax is wanted for the legitimate expenses of the State, we are ready to pay it; but let the zemindar make his own roads and canals, if you please.

I rejoice to see that, since the publication of my letter to Lord Mayo, there is a general awakening of the public mind to the necessity of preserving the land revenue of the country from being further tampered with. It was never, I believe, seen so clearly as now, how vitally important it is, while the State is committed to a policy of indefinite outlay upon the land, that we should retain the old prescriptive right to share in the improved value of its produce. The controversy which seemed all but hopeless seven years ago—so fully made up were men's minds at that period to the propriety of a Permanent Settlement—is now definitely closed. I look back sometimes with astonishment upon the prejudices with which this great question was formerly beset, and can hardly understand even now how the change of public opinion has been brought about.

> 'Tis the old history; Truth without a home,
> Despised and slain; then rising from the tomb.

Seven years ago I stood quite alone of the

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Indian Press upon this subject. To-day I rejoice to say the permanent settlement has no longer a single advocate in the Indian Press. In protesting against it with all my might I have been moved simply by considerations for the public good, and my writings have been as opportune as important.

It is idle to complain that the wealthy trading classes of the country—comparatively few in number—contribute little or nothing towards the expenses of the State. They have grown wealthy by their own exertions, and are not indebted for their wealth—as are the agricultural classes—to the generosity of the State. The wealthy trading classes do contribute very little to the State, but the agricultural classes have had enormously valuable rights conferred upon *them*, to the disadvantage of the cities and the embarrassment of the empire. Every one who has studied Indian finance with candour by this time knows that our rule has everywhere conferred upon agriculturalists not merely exemption from taxation in common with other classes, but enormously valuable proprietary rights in the soil, which up to our time belonged to the commonwealth. The difference between the agricultural and urban classes is this, that, while both are comparatively exempt from taxation, our moderation in levying the land revenue has conferred immense wealth upon the former.

Long as I have detained you, I must not close this lecture without a word upon the great subject of decentralizing our administration of finance. The income tax is simply a fraud upon the people of Madras, Burmah, Bombay, and other provinces, which are already contributing more than their proper share to the imperial treasury, and are now required to pay this tax simply to make up a deficit which is brought about by official tampering with the land revenue in other provinces of the country. If Bombay has a better land system than Bengal, as every one knows it has, Bengal ought not to be allowed to rob the minor presidency of the advantages which arise therefrom. The local Governments of India should be allowed to manage their own finances as the State Governments of the United States do. The decentralization of Indian finance that is worth anything means decentralization of the same order as that which exists in the United States. The Imperial treasury at Washington receives certain taxes which fall with equal incidence upon the whole country, such as customs, and defrays the imperial charges of the debt, army, &c., out of them. The local administration of each State is left in its own hands. So should it be here. The Imperial Government of India should take all taxes that fall with equal weight upon the provinces, such as salt, customs, stamps, and defray the imperial charges therefrom. All other taxes—the land tax first of all—should be held to belong to the provinces in which they are raised. How is it possible with justice to frame a single budget that shall include provinces whose circumstances are so different as Bengal and this presidency? The Government here, fortunately for its people, has kept intact in its possession the grand inheritance which they have in the soil. In Bengal, the Government, by the impatient folly of Lord Cornwallis, has lost that inheritance. If Bombay, then, is not be placed under perpetual tribute to Bengal, we must have two distinct systems of finance for them. Their circumstances are radically different. A direct tax of some kind or other may be a necessity there; in Bombay it is simply a fraud.—*Indian Economist.*

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THE

MADRAS REVENUE REGISTER.

No. 6.] MADRAS:—WEDNESDAY, JUNE 15, 1870. [Vol. IV.

IS TODDY A "LIQUOR?"—I.

Toddy is an article of such general consumption, and is so important an item of the abkarry revenue, that we need offer no apology for the following remarks regarding it.

Our readers are all probably aware that toddy is drawn, in a natural state, from cocoanut and palmyra trees; that it is used as an article of consumption in a sweet state, but to an inconsiderable degree; and that, after being drawn, fermentation very rapidly takes place without any artificial means, and it is then largely drunk by the lower Hindoo classes. In this latter form the drink is highly intoxicating, and is included among the liquors, the monopoly of the sale of which is in each district yearly rented out to the so-called abkarry contractor. This person is empowered by law to retail in licensed shops intoxicating liquors of country manufacture; and the illicit manufacture and sale of any "liquors" according to the Act is rendered a highly penal offence, and one in which the police are bound to act upon a complaint, and to produce the guilty parties before a magistrate. Indeed, so strongly are the Government interests protected, that it is a penal offence to be found conveying more than one imperial quart without a pass. The more narrowly the abkarry contractor's agents are able to watch illicit vendors and manufacturers, and the oftener they are able to obtain against them a conviction for such offences, the more will the whole of the sale of liquor pass through the lawful agents, and the more will fraud be repressed. Having this in view, it was mooted some two years ago that sweet toddy, that is, the toddy just drawn, in which fermentation has not yet taken place, should be included under the definition of "liquor." The opinions and reports of the different Collectors were called for; and it was ascertained that a considerable amount of sweet toddy was sold, to a greater or less extent, in certain districts, and that, owing to the irregular manner in which fermentation sets in, depending upon the cleanness of the pots in which the liquor was drawn, the heat of the sun, &c., it was often impossible to ascertain distinctly whether what was sold as sweet toddy was not, in fact, fermented toddy. It was, however, certain that the abkarry laws were frequently evaded, and thus the value to the contractor of the monopoly was decreased, and eventually a smaller price for the purchase of it was paid to Government. One Collector adopted the somewhat rash course of fixing the time of the day at which sweet toddy became fermented, and published a notice in the *Gazette*, in which he stated that after a certain hour

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in the afternoon all toddy drawn on the same day would be considered fermented, and the sellers of it without a license would be treated according to law. The Board of Revenue, however, quashed this order, and laid down that it was the duty of the police and the magistrate to ascertain in each case whether fermentation *had actually taken place or not.* The Board declined to recommend to the Government any alteration of the law, as they considered that the small amount of sweet toddy generally sold did not warrant the inconvenience which such a change would cause. We, therefore, see very clearly that the Board of Revenue consider that it is only after fermentation has taken place, that toddy can be treated as a "liquor;" but, when such fermentation has taken place, toddy comes under the definition of "liquor." This opinion is now generally acted upon throughout the Presidency; and, in trials before them for breaches of the abkarry law, sub-magistrates act in accordance with it.

The abkarry contractor employs a large number of agents, whose business it is to detect illicit sellers and manufacturers of arrack, toddy, &c.; to bring down the police upon the offenders; and to procure the conviction of the guilty parties before a magistrate. The abkarry contractor has a considerable amount of money at stake; he has paid probably at the rate of two-and-a-half lakhs per annum for the monopoly of three years; and his interest is, therefore, that as little "liquor" as possible, of any kind whatsoever, is sold by any person except his licensed sub-renters. In order to procure the detection and conviction of frauds, he is prepared to spend money; and it is an undoubted fact that he not unfrequently pays the police, in order that they may the better perform their duties. He, however, often goes further; and innocent vendors and transporters of sweet toddy, who have incurred his enmity, perhaps through a suspicion that they have conducted illicit sales, are sometimes arrested, the liquor they carry is sworn to be fermented, and they are then sentenced to a heavy punishment. Extreme cases of this nature have frequently been brought to our notice. We will state an example: the abkarry agent and the police charge A with being in possession of more than an imperial quart without a license. On inquiry it appears that the liquor, in possession of which A is charged with having been, was in a pot at the foot of a tree, in which tree A was at the very time drawing fresh toddy. The toddy at the foot of the tree was what he had drawn from other trees. The police swore that they tasted the liquor, and found it to be fermented. A declared that it had only just been drawn, and that it was sweet. In this particular case A was released, the magistrate being a European one. Here we see the following strange anomaly. A man is engaged in a perfectly lawful pursuit, namely, drawing toddy, presumedly for consumption; whilst in an unfermented state, however, natural causes intervene; the heat is somewhat greater to-day than it was yesterday; and, without any action on his part, his act yesterday innocent becomes one which; according to the spirit of the Board of Revenue's rulings, is to-day a punishable one. He has no pass, the liquid he is carrying is sworn to have been in a state of fermentation, and perhaps it was, and the man if tried before a native sub-magistrate would have been in all probability punished. We have heard of numerous instances in which the interpretation attached to the law by the Revenue Board has been so strictly carried out, that persons have been punished for conveying "liquor" without a license, who were merely carrying the toddy they had just drawn from the

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trees to the licensed stills, because whilst *in transitu* the sun had caused fermentation.

If, however, we look closely into the definition of the term "liquor," we shall find that the interpretation attached to it by the Revenue Board is incorrect, and the sentences passed by the sub-magistrates in accordance with that interpretation consequently illegal. In Act III of 1864, (Abkarry Act,) we find liquor to be any liquid in the "manufacture of which fermentation or distillation takes place." The essential points to be proved, therefore, in order to obtain a conviction, are—first, that the liquid has been "manufactured" from its natural into an artificial state; and secondly, that during that manufacture fermentation or distillation has taken place. The fact of manufacture in which there is no distillation, or fermentation, is as insufficient to warrant conviction as the fact of fermentation without manufacture. Distillation, of course, could never occur without some process of manufacture; but fermentation, we have seen in the case of toddy, invariably does, if the liquid has only been sufficiently long exposed to the air. It is, however, evidently not the intention of the law that an innocent and lawful act should, from natural causes, and without any guilty action of the party, suddenly become an offence. Some process of *manufacture* must have taken place before a legal conviction can be obtained. As the law stands at present there is *no illegality in selling toddy,* in whatever stage of fermentation it may be, *as long as no artificial process* has been made use of to produce fermentation.

We are fully alive to the serious consequences which will result to the Government interests, if this proper interpretation of the law is universally adopted. Toddy fermented is more generally drunk than distilled arrack; and if to sell toddy naturally fermented is an unpunishable offence, the value of the Government abkarry farms will be immensely deteriorated. There is, however, no need that this should occur; what is indispensably necessary is, that the *law* should be altered so as to include toddy in both its sweet and fermented state. If sweet toddy is not included in the definition, there will always be a loophole for oppression and injustice. If the monopoly of the sale of both is sold to the contractor, the interests of the people will be far better consulted than they are in the present vague and uncertain state. Toddy when fermented is intoxicating, and, as such, should undoubtedly be taxed; when sweet, it is drunk only to a slight extent, and those who wish to purchase will still be able to do so from the abkarry agents, as well as they do at present from unlicensed sellers. There should be allowed no chance of the injustice taking place which now so frequently occurs, sometimes in accordance with the meaning which the subordinate magistrates have been instructed to attach to the law, but often, we fear, simply as a means of oppression made use of by a wealthy contractor, by the agency of a, sometimes, corrupt police. We most earnestly request the consideration by the Government of the point we have raised, of the correctness of which we feel no doubt; and we would invite from our readers and correspondents a discussion of this question, of such importance to the Government and to the country at large.

THE SEVEN PAGODAS.

We mentioned in our last that we had received from the Revenue Secretary to Government a very handsome edition of papers relating to the Seven Pagodas on this coast, and that we would take an early opportunity of communicating to our readers the impressions left on our mind by

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a perusal of these valuable papers. We now proceed to fulfil our intention in part, as we find that we cannot complete our notice of the volume in one impression. We feel sure that, however imperfect our notice of the subject may be, it will nevertheless prove of some interest to our readers, many of whom may perhaps for the first time learn, especially the good folks who live on within the Municipal limits of Madras, scarcely conscious, and certainly not caring to see for themselves, that on a spot not more than thirty-five miles south of Madras, and easily accessible by means of the Adyar and Sadras Canal, are to be met with specimens of human skill and persevering labour, which in their details are even thought to be superior to the famous carvings of Elephanta and Ellora. We observe that the book we propose to notice consists of several descriptive and historical papers contributed from time to time by different writers, among whom the names of the Rev. G. W. Mahon, Lieutenant Braddock, the Rev. W. Taylor, and Sir Walter Elliot, will be familiar to Madras readers. These papers, hitherto buried in the archives of the Royal Asiatic Society, and having but once seen the light of day in the ephemeral pages of the *Madras Journal of Literature and Science*, have now been happily rescued from oblivion, carefully collated, and thrown together into a durable form, illustrated by well-executed lithograph drawings of the quaint carvings and inscriptions with which those remarkable relics of human ingenuity, known as the Seven Pagodas, so richly abound. All who feel an interest in these ancient sculptures and inscriptions, who wonder and argue about them as archæologists, and who regard them as specimens of an ancient but now forgotten art, must alike appreciate the careful and intelligent labours of Captain M. W. Carr of the Madras Staff Corps, who, in bringing these records into their present form, has enhanced their value by his clear and succinct notes on points left unexplained by the writers. Mr. Caleb Foster, of the Foster Press, has in his turn materially helped the editor to preserve these papers for enquiring minds by enduing them in the attractive garb of accuracy of letter-press and beauty of type; while our brahmin friends assure us that the clever reproduction of the original Deva-nagiri writings and inscriptions, which are an additional illustration of the descriptive papers, are highly creditable to the Press of the Society for the Promotion of Christian Knowledge.

First among the papers is one taken from the Asiatic Researches, Vol I, 1788, contributed by the pen of William Chambers Esq., and entitled, "*Some account of the Sculptures and Ruins at Mâvalipuram, a place a few miles north of Sadras, and known to seamen by the name of the Seven Pagodas.*" Mr. Chambers tells us at the outset that he wrote, from recollection only, after the lapse of many years; and that he wrote more in the hope of bringing the subject before the attention of the public, than with the view of producing an elaborate memorial. The subject seems, however, to have taken a great hold on Mr. Chambers' mind, for after he had once seen the place in 1772 and re-visited it in 1776, so vivid were the impressions received by him, that he wrote many years after with all the freshness and vigour of one whose interest in his subject was recent and enthusiastic. As to the name by which the place was most commonly known, "The Seven Pagodas," Mr. Chambers appears to have inclined to the belief that such might have been their number at one time, but that some had been subsequently swallowed up by the restless waves. He points out that the Tamil name "Mavalipuram," would bear no such interpretation. He considered that *Mavalipuram* was only another form of *Mahabali*

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puram, i. e., the City of the Great Báli, a demi-god of Southern India. The principal hill or rock here is the one likely to be first noticed by observers from the sea; it is near the shore, and rises abruptly from the plain. The northern face of this rock is covered with bas reliefs and sculptures, though some of the subjects reflect but small credit on the taste of the artist who designed them. The next object which attracted Mr. Chambers' attention is a temple on the shore, east of this hill. The pagoda as described by him is a monolith about 16 or 18 feet high, with an arched top, of a style of architecture differing from any at present employed in that locality. Mr. Chambers points out the corroding effect of the sea-air, and says that where the sculptures have been exposed to its influence they are much blackened and defaced, whereas where they are well-sheltered they appear as fresh as though they were recently cut. This erosion is particularly noticeable in a sort of cave hewn out of the rock, which Mr. Chambers supposes was designed for the purposes of a choultry. The sculptures, though much defaced, are considered to be intended to represent Krishna tending the herds of Nanda, his putative and foster-father. Mr. Chambers found more temples on the rock itself, and on the northern slope also, a sort of stone couch carved out of the living stone, with a lion at one end in place of an easier pillow; this goes by the name of the bed of Dharmaraja. Mr. Chambers next proceeds to notice the Rathas, or car-like temples—he only mentions two—which he found to be very different in their style of architecture from that at present in vogue, which bears some resemblance to the Egyptian, with its pyramidal form and archless doors. The older style, on the other hand, has a greater resemblance to the Gothic school, the arches being formed by the segments of circles uniting at the top. The character in which an inscription on one of the pagodas was written was in Mr. Chambers' time utterly unknown. This led the writer into an attempt to discover some resemblance between it and the Páli, the sacred language of the Siamese; and he was strengthened in his theory by the writings of M. de la Loubère, and the opinion prevailing among the missionaries of Siam, that the Páli was not an entirely dead language, but was still employed to some extent by the people of Ceylon and the adjacent parts of India. Mr. Chambers then enters into a disquisition on the Páli, and traces the resemblance between it and the Sanscrit. Dr. Babington, however, who wrote in 1828, sets this question at rest, as he and various learned Brahmins succeeded in deciphering the inscriptions, which he pronounced ("with the exception of a scrap of modern Telugu") to be in Sanscrit, although the characters vary considerably from each other, and from those used at the present day. All this was, of course, unknown to Mr. Chambers, who gives a long and ingenious account of the similarity between the religion and languages of Ceylon and Siam. Another fact which struck the mind of the writer was that the designs of the various temples had never been completed. The outsides were indeed perfect and richly adorned; but the interior had not even been excavated, and was consequently inaccessible and useless for all purposes either of worship or shelter. He specially mentions the case of the western side of the most northerly temple, which was excavated for the depth of some four or five feet, the work then appearing to have been arrested as though by some convulsion of nature, a deep rent of about four inches wide running right through the rock to its very foundations. The marks of tools were visible on both sides of the fissure, from which Mr. Chambers inferred that the rent took place while

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the works were in progress. The agent which produced the rent, it seemed to him, might be an irruption of the sea joined to, or caused by, an earthquake. A pretty little poetical legend follows, telling the fate of the magnificent city of Báli now buried in the ocean; while all that remains to be seen are the gilded tops of her pagodas, which gleam in the beams of sunrise above the waves. Such was the tale told by the then oldest inhabitants to Mr. Chambers; and they ingeniously accounted for the fact that these gilded tops were no longer to be seen from the action of the sea air, which had now dimmed and covered them with verdigris ! ! We fear, however, that subsequent explorers have thrown a wet sheet over this pretty little fancy, and indeed that we must abandon the idea of there lying hidden under the surges the domes and walls and spires of an ancient and beautiful city. We cannot close our notice of Mr. Chambers' labours without remarking that to him appears to belong the honour due to the pioneer, who, although followed by more accurate observers, is yet the man to whose industry and enterprize all who follow owe the road that enabled them to reach their object.

The next paper is headed in nearly similar terms, "*Some account of the Sculptures at Mahabalipuram, usually called the Seven Pagodas.*" This account comes from the pen of J. Goldingham, Esq., and was published in Vol. V. "Asiatic Researches" in 1798. Mr. Goldingham's style is clear and concise; he never wanders from his subject, but describes in simple language the temples and carvings, and furnishes some fac-similes of the inscriptions. Possibly the most interesting part of the paper is the description of one of the temples dedicated to Siva, in whose sculptures appear Siva, Brahma, Vishnu, Parvati (Vishnu's consort), and Siva's wife in her character of Durga, the protectress of virtue. Durga is here represented mounted on a lion, and in the act of rescuing a victim from a terrible monster with a buffalo's head and a human body, called in the text *Yamarája*, the correct word being, as we are told by the editor in a footnote, *Mahishasura*. Close to the sea, and defended from it by some large stones, is a stone pagoda dedicated to Siva; it contains a lingam, and stretched on the floor is a colossal figure of Vishnu. The Brahmins of the place told Mr. Goldingham that it was intended to represent a Raja who had been chained to the ground by Vishnu and left in that unenviable position. Mr. Goldingham repeats the story of the submerged pagodas much to the same effect as Mr. Chambers, and expresses his fears lest that in the course of time the whole of the temples and sculptures may be overflowed by the sea. Mr. Goldingham was inclined to attribute the sculptures and carvings to a body of artificers who fled their own country in the north, and during their stay at Mahabalipuram executed these various works, which they left unfinished, when, on being reconciled with their own sovereign, they returned to the north. This was, he thought, the more probable, as there is a striking difference between their style of architecture and that of other pagodas in Southern India, the figures and pillars resembling those of Elephanta and Ellora, and thus indicating a northern origin.

The third of the series is a paper of far greater pretensions than the two we have just noticed. It was written by Benjamin Guy Babington, M.D., F.R.S., and Secretary to the Royal Asiatic Society, and first appeared in the Transactions of the Royal Asiatic Society, Vol. II, 1830. It is adorned by beautifully executed and deeply interesting sketches, from the pencils of Mr. Arthur Hudleston and Dr. Babington himself. Dr. Babington alludes to the early labours of Mr. Chambers, and then refers

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to the more trustworthy and reliable account of Mr. Goldingham. It is deeply interesting to this Presidency to learn that the late lamented Bishop Heber saw these famous temples, and pronounced "the general merit of the work superior to that of Elephanta." The legend of the submerged city in which earlier authors indulged is rejected by Dr. Babington, who for several reasons sets it aside as untenable—first, there was not the usual rubbish, such as ruined walls, mounds, broken pottery, &c.; second, the failure of the attempts of Messrs. Ellis and Mackenzie to discover by careful soundings any remains of submerged buildings near the coast; third, the total absence of any recorded advance of the sea on this coast since the introduction of the present system of Hindu mythology, to which the sculptures and inscriptions refer; fourth, the inscriptions (first understood by Dr. Babington) are altogether silent as to the feats of the great Báli, and give no encouragement to the idea that Mahabalipuram was the ancient appellation of the place. Indeed, the learned doctor's conjecture about the origin of the place seems to be that certain Brahmins, attracted by the picturesque and solitary position of Mahamalaipur, settled there, and employed the stone-masons of the place to make these excavations and engravings to add to the beauty and sanctity of their abodes. In the paper under notice the reader is treated to a spirited and interesting explanation of the large and handsome drawings, twelve in number, executed by these clever co-workers, the writer himself and Mr. Arthur Hudleston. Speaking of the shore-temple, Dr. Babington thought it a mistake to consider the pillar before it a *lingam*; he believed it to be a *stambha*, or post, usually found in front of Hindu temples. Of the five monolithic *Rathas*, but little is said by our author; he refers to a plate of them drawn by Mrs. Graham, and expresses his conviction that they were never intended to represent the cumbrous wooden cars which bear the same name. They appeared to him to be temples in an unfinished state, having never been excavated within, though the exterior is adorned with beautiful sculptures. It is, after all, in his account of the inscriptions that Dr. Babington seems most thoroughly at home; his explanations impress one with the conviction that they are offered by a man who has given his subject deep and careful study. The first-mentioned is an ancient Tamil inscription which Dr. Babington did not copy, as a wall projecting from the rock cuts off a portion of each line. He ascertained, however, that it recorded a grant of land to the Varahaswami Pagoda, the boundaries of the plot being very carefully and fully detailed. Dr. Babington adds an alphabet of ancient Tamil, collated from several ancient Tamil inscriptions, for the use of those who may hereafter wish to decipher ancient Tamil inscriptions. The editor here appends a note pointing out the transition of letters from ancient to modern Tamil; the க of the present day, for example, bearing but little resemblance to the simple cross † which was its earliest form. Captain Carr concludes, from the extreme simplicity of the letters, that the Tamil is very old; and from several points of structural difference, he argues that it is not derived from the Sanscrit, but is of at least equal antiquity. Dr. Babington explains Mahamalaipur as signifying the "city of the great mountain," from the sanctity of the little hill on which it was built. He altogether dissents from the previous idea that Mahamalaipur stands for Mahabalipur, and signifies the "city of the great Báli." This Báli, if indeed he ever existed, appeared to Dr. Babington to be a hero of the west coast, where there is an annual feast in his honour. Another style of ancient writing was found by Dr.

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Babington in a small temple dedicated to Ganesa. The tracing on the rock was faintly cut, and gave the learned doctor much trouble to copy; but he was fortunate enough to find a Jain Brahmin who translated it for him. Two ancient inscriptions were forwarded to the doctor from Madras, "which purported to be from the neighbourhood of Mahamalaipur;" and two others were sent to him by Colonel Havilland. All these four were written in different characters, though the matter in each was the same. Thus there were four different varieties of Sanscrit writing, two of which seemed to Dr. Babington to be ancient forms of the Grantha character so common in Southern India, and the other two were considered to be ancient Deva-nagiri. Another inscription, never before translated, was deciphered by Dr. Babington, who pronounced the language to be Sanscrit. He found a portion of it to be written in the same kind of characters as those used in the inscription on the Ganesa pagoda, and thought it probable that one was the square and the other the rounded form, analogous, as he says, to the two varieties of Páli and Ariyam. We cannot but share in the regret expressed by the learned doctor that these inscriptions, after all, throw so little light on the history of the place where they are found, or the people who carved them: they are generally mere strings of attributes or epithets of the images near to which they are carved. There are, however, no more certain aids to history than inscriptions in metal or stones such as abound everywhere; and we think Dr. Babington was justified in believing that a great step had been taken by showing that they were all in the Sanscrit, in which language, he remarks, "so little change has taken place in the lapse of ages, that, when once we have succeeded in the task of deciphering, all difficulty is at an end, and the record of a remote antiquity is placed intelligibly before us." Dr. Babington's learned and interesting memoir is brought to a close by an expression of his conviction that India contains no ancient inscriptions, which may not, by careful study and the assistance of learned natives be deciphered and interpreted. Appended to his paper are two tables, containing the characters used in the inscriptions on the Ganesa pagoda and on the Rathas.

HIGH COURT—MADRAS.

BITTLESTON AND INNES, J. J.

Service inams—Regulation VI of 1831*—Jurisdiction—*

Where A petitioned the Revenue authorities to restore to him his share of certain service inam lands of which B had dispossessed him, and was referred by them to a civil suit—

HELD *that, if the lands in question were service inam within the operation of Regulation VI of* 1831, *then, under Section* 3, *Clause* 1, *the Civil Courts had no jurisdiction to entertain the suit.*

S. A. 243 *of* 1869.

Rajabattuni Ramiah *v.* Rajabattuni Rajannah.

THIS was an action for the recovery of the moiety of the lands in the villages of Nilunagaram and Kumaragunta, yielding a gross produce of Rupees 82, inclusive of the kattubadi rent; also for past profits amounting to Rupees 218. The plaint set forth that the plaintiff and his elder brother Kasipathi, the paternal grandfather of the first defendant, enjoyed in equal shares the profit derived from the mulguzari inam lands (situated in the villages above mentioned) and performed services as shroff. Kasipathi died in 1856, after which plaintiff and Papiah (son of the deceased and father of first defendant) enjoyed the lands. While plaintiff was absent for a few days in 1869, Papiah usurped all the lands and died almost immediately, when first defendant took possession. Plaintiff presented a petition to the Assistant Collector in November 1861, praying for the recovery of his share of the lands from the first defendant. Some proceedings were held, but in June 1865 an order was passed referring him to a civil suit. From this order he appealed to the Board of Revenue, but with a similar result. The defendant contended that the litigated lands were inams attached to the service of shroff, as would appear from the Guddikattu accounts of Fuslies 1243 and 1245;

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that his grandfather Kasipathi, whose name was entered in the said accounts, and, after him, defendant's father, and then defendant himself, enjoyed these said lands; but that plaintiff never had any right to them, nor did he ever perform the services of shroff. He further alleged that the said lands were acquired *after* his grandfather and the plaintiff had divided; that the plaintiff's petition was dismissed by the Assistant Collector, who further sent an order to the head of the Police at Palakondah directing him to remove the attachment from off the produce of those lands, and to make it over to the defendant; that, when the land in the village of Kumaragunta was assigned to plaintiff in suit No. 633 of 1853 on the file of the District Munsiff of Sittianagaram for the amount due under the decree in that suit, the land was, by order of the Agent's Court, made over to defendant's father without any liability for the payment of the amount of the said decree attaching thereto, on the ground of its being attached to the service of shroff; that, therefore, this suit had been brought contrary to Clause 1, Section 3, Regulation VI of 1831. The District Munsiff of Rajam, before whom this action was brought, did not credit the evidence adduced by defendant to show that the plaintiff had no right to the lands in dispute; he was of opinion that some of the defendant's documents were prepared subsequent to the dispute between the parties; and further that the orders by the Collector and the Board of Revenue referring plaintiff to a civil suit removed the last objection entered by defendant, namely, that the suit was an improper one under Clause 1, Section 3, Regulation VI of 1831. On these grounds the District Munsiff entered a decree for the plaintiff. The defendant appealed to the Court of the Principal Sudr Ameen of Vizagapatam, who, however, simply confirmed the decree of the lower Court. The defendant, therefore, specially appealed to the High Court on the ground that neither the Collector nor the Board of Revenue were authorized to confer on plaintiff a right which the law did not give him; and that the land was service land, and, as such, exempt from the jurisdiction of the Courts by Regulation VI of 1831. Sloan for the appellant. The High Court delivered the following

Judgment:—26th January 1870.

The question raised in this case is whether the Civil Courts have jurisdiction to entertain this suit. According to Regulation VI of 1831, Section 3, Clause 1, they have not, if the land in question is service inam land within the operation of that enactment; but, though the objection is taken in defendant's written statement, no issue was raised upon the question of jurisdiction, and the District Munsiff appears to have thought that the orders of the Collector and Board of Revenue declining to interfere and referring the plaintiff to a suit were sufficient to dispose of the matter. We think that an issue, whether the lands sought to be recovered are service inam lands within Regulation VI of 1831, Section 3, Clause 1, must be sent down to the Court of first instance for a distinct finding thereon, and that the parties should be at liberty to adduce additional evidence on that question. The costs will be costs in the cause.

SCOTLAND, C. J., AND HOLLOWAY, J.

Unsettled polliem—Debts of predecessor not binding on the polliem in the hands of successor—Private assets liable—

A sued B (holder of an unsettled polliem not covered by a permanent sunnud) for a debt contracted by his father. The Civil Judge found that the debt had been incurred to enable B's father to pay arrears of peishcush and to improve the estate, and held that both the private property left by the deceased and the revenues of the estate in the hands of B were liable for the debt.

HELD *by High Court, on appeal, that the polliem not being an estate of inheritance but a life estate conferred on each holder by the Crown, its revenues in the hands of a successor could not be made liable for the debt of a predecessor, even if such debt had been contracted for the purpose of saving the estate from attachment; that the ordinary rule of a successor taking both the rights and liabilities of him from whom he claimed did not apply here, because there was no continuance of the previous estate, because the present holder did not succeed, i. e., was not* in the per; *but that all private property and even assets collected after death would be clearly liable.*

R. A. 80 *of* 1869.

Olagappa Chetty *v.* The Collector of Madura and three others.

THE plaintiff, Olagappa Chetty, sought to recover from the defendants Rupees 39,678-11-11, principal and interest due under a razinamah filed by the plaintiff and the late Zemindar of Gundamanaikanur, as plaintiff and defendant respectively in Original Suit 17 of 1863 on the file of the Civil Court of Madura. The razinamah in question provided that the said zemindar should pay the plaintiff Rupees 32,259-2-5 in five instalments, commencing

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from the 30th June 1865 and ending 30th June 1869, with interest at one per cent per mensem; in default of payment of any one instalment, the entire sum was to be collected by process of the Court with interest, without reference to the subsequent instalments. The zemindar failed to act up to the razinamah; but the Civil Court, by its order dated 1st December 1865, declined to execute the razinamah. The plaintiff then brought Original Suit 8 of 1866 in the Civil Court of Madura to recover from the zemindar Rupees 39,678-11-11, including interest. The zemindar died before the suit was heard, and the Court directed plaintiff to bring a fresh suit against the heirs of the deceased. The present was this fresh suit, and it was brought against the Hon'ble D. Arbuthnott, Collector of Madura and Agent to the Court of Wards, on behalf of the minor zemindar, and against the minor's guardian, manager, and mother. On behalf of the minor zemindar of Gundamanaikanur, the Collector of Madura pleaded that the estate of Gundamanaikanur was an unsettled polliem for which no permanent sunnud had been granted; that a sunnud-i-milkeut istimrar was necessary to constitute a zemindary hereditary property; that the succession to the estate depended entirely upon the will and pleasure of the ruling power; that, in exercise of this power, the Government had appointed the minor son of the deceased zemindar to succeed his father; and that, therefore, neither the minor nor the estate that had been thus conferred on him was to pay any portion of the amount in question. The Civil Judge (Mr. J. D. Goldingham) found that the evidence adduced was conclusive in showing that the sum which plaintiff sought to recover was founded upon a *bonâ fide* debt incurred by the late zemindar, and that the zemindary was what was called an unsettled polliem, (*i. e.*, an estate held without a sunnud, which by Regulation XXV of 1802 was necessary to constitute it hereditary property). For the plaintiff, it was contended that the revenues and the corpus of the estate were equally answerable; that the succession to the zemindary had continued from father to son; and that even in the absence of a sunnud there was nothing in the descent of the particular property to exclude it from the operation of the general rule of Hindu law as applicable to inherited property in general. In the opinion of the Civil Judge, whether or not the revenues of the zemindary were liable, depended mainly on the character of the debt itself and the urgency of the late zemindar's necessities. It had been argued that, the zemindary being a separate acquisition, its income was not liable. The grantee was no doubt entitled to enjoy all the benefits of the gift, and it was difficult to say how this could be done if the revenues were liable to be separated from the corpus. On the other hand, it had not been contended that the ruling power would exercise its right in dealing with these properties otherwise than by continuing the succession in the same family; therefore, if the object for which the debt was incurred tended to that result, it was one which might be chargeable on the estate in the hands of the successor. In this case, then, the Judge had no doubt that the money had been borrowed to consolidate the debts incurred for payment of arrears of peishcush, and to repair an anicut which had been the means of increasing the resources of the zemindary. Had not the money been borrowed, the zemindary, or a part of it, would have been attached, and sold by the Collector for arrears of peishcush. Further, applying the principles enunciated by the Lords of the Privy Council in the case of Hanooman Persad Panday, (VI Moore, 393,) the Civil Judge was of opinion that where, by means of a certain act done *bonâ fide*, an estate is preserved intact or its condition permanently improved, the doer of that act ought not to suffer from the technicalities of the law, arising more from accident than design, regulating the succession to that estate. Therefore Mr. Goldingham thought that the plaintiff was entitled to recover the sum sued for from the income of the zemindary; and, as regards the property inherited by the minor from his late father, there was no doubt in his mind that it was clearly liable, but what that property amounted to had not been ascertained. Mr. Goldingham accordingly decreed that plaintiff was entitled to recover the sum sued for, with further interest at half per cent per mensem till date of collection from the revenues of the zemindary, as well as from the private property inherited by the minor zemindar from his father.

From this decision the defendants appealed to the High Court. The Government Pleader (Handley) for the appellants; Mayne, with him Scharlieb, for the respondents. For the Court of Wards, Handley rested his appeal on the proposition that the revenues of an unsettled polliem were not liable, in the hands of the holder for the time being, for the debts of a previous holder of the estate for whatever purpose contracted. For the respondent, it was contended that this estate was practically hereditary, in that it had descended through a long course of years from father to son, and that it was not the policy of the Government to refuse the inheritance to the lawful heir and confer it on a stranger; that it was practically a settled estate, as the peishcush had not varied; that the plaintiff had advanced his money to save the estate from being taken away and sold for arrears of public revenue; that he had also advanced money for irrigation works, by which the revenues had increased; that by such advances, he had preserved the estate from

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passing away from the heirs; that, even if the advances which had improved the estate as well as saved it from attachment and sale could not bind the estate itself, the money borrowed for such purposes was clearly recoverable from the revenues which had thus been preserved to the heir; that, although the holder could not alienate any portion of the estate, he could set aside any portion of the income for any purpose he pleased; and it was the income, especially the accumulated income in the hands of the Collector, which it was sought to make answerable for the debt. Having taken time to consider, the Judges of the High Court delivered the following

Judgment:—30th May 1870.

SCOTLAND, C. J.—This is a suit to enforce the payment of a debt due by the late possessor of the polliem of Gundamanaikanur by the guardians of his minor son, and the lower Court has found that the debt was incurred for money lent to pay off arrears of peishcush for which the polliem was about to be attached and for reproductive work done upon the land, and has decreed the liability of the defendants to pay the sum claimed from the revenues of the polliem as well as from the private property of the late Poligar inherited by the minor. The ground of appeal relied upon by the defendants is, that so much of the decree as adjudges payment of the debt out of the revenues of the polliem is wrong, the polliem not being an estate of inheritance; but an estate which had been held by the minor's father and the possessors of it who preceded him for life only, under grants made to them severally by the Government. This objection I am of opinion must prevail. It has long been considered an established rule of Hindoo law in this Presidency that an heir is not liable to be sued for the debts of the person whose heir he is, except assets have come to his hands, that is, he has acquired property by succession from the deceased debtor, and then only to the extent of such assets. Now clearly, as respects the polliem, the defendant is not in that position. On the determination of the estate of his father by his death, the proprietary right to the polliem reverted absolutely to the Government, and by their fresh grant to the defendant a newly-created estate for life became vested in him. In this respect the present case differs from the cases of *Naraganty Lutchmeedevammah* v. *Venganna Naidoo*, and *the Collector of Madura* v. *Veerocamoo Ummal*, cited in argument from *IX Moore's Ind. App., pp.* 66 and 446. They were cases of disputed title to polliems which were, it appears, hereditary. The defendant, therefore, is not liable as the personal representative of his father by reason of his possession of the polliem. So far, the learned counsel for the respondent hardly contested seriously the non-liability of the defendants (the appellants). His main argument was that by the plaintiff's loan the polliem had been saved from confiscation and the grant of it secured to the minor, and that that afforded an equitable ground for making the liability in the present case an exception to the general rule. It does not appear to me that the necessary effect of enforcing the attachment would have been to deprive the minor of a grant from the Government. But, even assuming that such would have been its effect, I can see no ground of equity upon which to rest the plaintiff's claim, which is in effect to treat the debt as a charge upon the minor's estate. The plaintiff simply made the late zemindar his sole debtor for advances to enable him to protect his life-interest by paying off the chargo for arrears of peishcush. They stood, in short, in the relative positions of ordinary simple contract creditor and debtor. The principle recognized in the case of *Hanooman Persad Panday* v. *Mussumat Babooee Munraj Koonweree* (*VI Moore's Ind. App.* 412) to which the Court has referred has no application here. It relates to the power of a manager to encumber by a mortgage an existing estate; and here the only estate which could have been charged, if a lien had been created by the minor's father, terminated with his life.

For these reasons I am of opinion that the decree of the lower Court must be reversed, so far as it declares the liability of the defendants in respect of the revenue of the polliem. In other respects the decree will stand affirmed. I think the appellants' costs should be paid by the respondent.

HOLLOWAY, J.—The only question is whether the revenues of a polliem not hereditary can be held liable for the debts of the previous holder. The ground upon which it is sought to bind them is that the debts were incurred for the release of the estate from attachment. If this had been proved and the present holder had taken the estate through the borrower, there would be no doubt of the liability; and the reason would be that the successor takes both the rights and liabilities of him under whom he claims, and must discharge the latter to the extent of the assets taken. It is unnecessary here to advert to any exceptions. The reason why this rule does not apply to the successor to a polliem is that, as pointed out in III. H. C. R., 303, there is no continuance of the previous estate; the present holder does not succeed, or, to use the refreshing language of the English law, he is not in "*in the per*."

Mr. Mayne argued that, if the estate had been attached and sold, all chance of succeeding would have been cut off. This proposition I am not prepared to admit; but, whether it be so or not, such a possibility can have no effect upon a plain principle of the law of

obligations. What the advance of money preserved, if, indeed, it preserved anything, was the estate of the then holder. It had, and could have, no connection with an estate which had not then, and might never, have existence, since it depended wholly upon the will of others. There is nothing in the cases in IX. Moore to the contrary. Whether rightly or wrongly, the case at page 66 assumes the hereditary character of the polliem, and the decision is only an authority for estates which go by descent. That this is not one is conceded. The case at page 446 is equally inapplicable, for the language of the Sudr Court at 454 must be taken to mean that the Government had no intention to resume; that their conduct of the suit in the Court below negatived such intentions, and that the only question which they intended to raise, and did raise, involved the assumption that the grant was to be continued, unless there was a rule of Hindu law which would have worked an escheat if the estate had been hereditary. The Sudr Court and the Judicial Committee decided that there was no such rule, and the case has no bearing upon the present question.

The rule of law perfectly well established here, is that a man must discharge the liabilities of him under whom he claims to the extent of the assets taken. It follows that the assets so taken are the only fund upon which the creditor has a claim; and the nature of the estate taken shows that its object-matter is not assets, and for the simple reason that it was not taken from or through the debtor. I have no doubt that the decree of the lower Court must be reversed, so far as it seeks to fasten the debt upon the income of the polliem. The rents due to the deceased, even if recovered after his death, will, of course, be assets. So will all private property which has descended from the deceased to the minor.

HIGH COURT—CALCUTTA.

Peacock, Sir B., *Kt.*, C. J., and Kemp, Macpherson, Mitter, and Hobhouse, Sir C., *Bart.*, J. J.

Ambika Debi and another (two of the defendants) *v.* Pranhari Das (plaintiff) and others (defendants.)*

Regulation VIII of 1819, *Section* 13, *Clause* 4—*Act VIII of* 1865, *B. C.*, *Section* 6—*Act X of* 1859.

An under-tenant, who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit.

These were two analogous cases brought under precisely similar circumstances. Both suits were heard together in the Mofussil Courts. Pranhari Das was the plaintiff in each case; the defendants were Muktakasi Debi, Mohan Chandra, Tincowri, Srinath, and Ambika Debi. The facts of one case were as follow:—One Srikant Lahuri obtained a decree under Act X of 1859 against the owners of a mehal, of which Muktakasi Debi owned eight annas, and Mohan Chaudra, Tincowri, and Srinath held the other 8-anna share. Before putting up the mehal for sale under the rules laid down in Act VIII of 1865 (B. C.) for sales of under-tenures in satisfaction of decrees under Act X of 1859, Mohan Chandra, Tincowri, and Srinath sold their 8-anna share to Ambika Debi. When it was put up for sale, the plaintiff, who had a sub-tenure under Muktakasi Debi, in order to save his sub-tenure, and, for the protection of the mehal in which he was then interested, deposited the amount due for rent, and the sale was consequently stopped; he now sued to recover his deposit from the shareholders. There was no dispute that the share which had been purchased by Ambika Debi was liable for rent due on it; but it was contended on her behalf that, as the rent due was for a period previous to the date of her purchase, she was not liable for it. A decision of the High Court *In re Sreenath Haldar*,* on a reference from a Small Cause Court, was relied on as showing that a suit would not lie for the recovery of plaintiff's deposit; but it was pointed out that, in the case referred to, the sale in execution of an Act X decree took place under Act VIII of 1835, which did not provide for parties depositing money due under the decree, whereas the sale in the present case took place under Act VIII of 1865 (B. C.), and the plaintiff deposited his money under Section 6 of that Act. Both the Court of first instance and the lower Appellate Court held that the plaintiff was entitled to recover.

Ambika Debi and Muktakasi Debi then appealed to the High Court on the following grounds:—

First.—That the plaintiff was not entitled to recover the amount sued for from the special appellants, inasmuch as the plaintiff's under-tenure had no connection with the share purchased by the special appellants.

Second.—That, assuming that the plaintiff was entitled to recover the said amount from the special appellants and their co-sharers, his only remedy was to apply to the Collector for immediate possession of the tenure preserved from sale, under the provisions of Clause 4, Section 13, Regulation VIII of 1819.

After argument before a Division Court (Glover and Mitter, J. J.) the following question was referred to a Full Bench:—

Whether an under-tenant, who has saved the superior tenure from sale by depositing the amount of rent due from the holders of that tenure to the zemindar, is bound to apply to the Collector for

* Special Appeals, Nos. 3,237 and 3,299 of 1868, from the decrees of the Officiating Judge of Jessore, dated the 2nd September 1868, affirming the decrees of the Munsiff of that district, dated the 30th December 1867.

* 4 W. R., S. C. C. Ref., 4.

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immediate possession of the tenure thus preserved from sale; or whether he is competent to sue for the recovery of the amount deposited by him in the ordinary way without making any such application.

The following remarks were made in referring the question by

MITTER, J.—With reference to the first ground of appeal we are clearly of opinion that it is not valid. It is admitted that there has been no legal partition between the special appellants and their co-sharers, and that the whole tenure was liable to be sold for the arrears due to the zemindar. Under such circumstances it is clear that the special appellants were just as much benefitted by the payment made by the plaintiff as their co-sharers, and the provisions of Clause 4, Section 13, Regulation VIII of 1819, clearly show that the proprietors of the tenure saved from sale are liable for the amount paid by the under-tenant for that purpose. We overrule this objection.

The second objection is also untenable. An application to the Collector for obtaining immediate possession of the superior tenure is not the only remedy prescribed by the provisions of Clause 4, Section 13, Regulation VIII of 1819, which have been extended to cases of this description by Act VIII of 1865 of the Bengal Council. Clause 4, Section 13, Regulation VIII of 1819,* distinctly enacts "that the deposit shall be considered as a *loan* to the proprietor of the tenure "preserved from sale by such means, and the "taluk so preserved shall be the security to the "person or persons making the advance, who shall "be considered to have a lien thereupon in the "same manner as if the loan had been made upon "mortgage; and he or they shall be entitled, on "applying for the same, to obtain immediate pos-"session of the tenure of the defaulter, in order "to recover the amount advanced from any profits "belonging thereto." It is quite clear that the last portion of this clause merely amplifies the remedy of the party by whom the advance is made, but it cannot deprive him of the privilege of recovering that advance by an ordinary suit. The amount advanced is to be treated as a loan secured upon a mortgage of the tenure preserved from sale, and the party by whom the advance is made has every right to recover it by an ordinary suit in the Civil Court, or by obtaining immediate possession through the Collector. The jurisdiction of the Civil Court has been in no way barred by the provision relating to immediate possession, and we are, therefore, bound to entertain this suit by the provisions of Section 1, Act VIII of 1859. As, however, our opinion seems to be in conflict with a decision passed by a Division Bench of this Court in *Kartick Surmah* v. *Bydonath Saeenee*,* the question must be submitted to a Full Bench for an authoritative decision.

* *Regulation VIII of* 1819, *Section* 13, *Clause* 4.—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent; but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluk so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered in possession in consequence, he shall not be entitled to do so, except upon re-payment of the entire sum advanced, with interest at the rate of twelve per cent. per annum, up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced with interest has been realized from the usufruct of the tenure.

Baboo *Bangsidhar Sen* for appellants.

Mr. *Rochfort* and Baboo *Karuna Das Bose* for respondents.

The judgments of the Full Bench were delivered as follows:—

PEACOCK, C. J., (concurred in by MACPHERSON, MITTER, and HOBHOUSE, J. J.)—It appears to me that the suit will lie. Clause 4, Section 13, Regulation VIII of 1819 says that the money paid to preserve the tenure "shall be considered as a loan "paid to the proprietor of the tenure preserved "from sale by such means, and the taluk so preserv-"ed shall be the security to the person or persons "making the advance, who shall be considered to "have a lien thereupon in the same manner as if "the loan had been made upon mortgage." If it is to be considered as a loan, then all the remedies which the law allows for the recovery of loans must apply to this case, unless there are words to show that that has not been the intention of the legislature. I thought at one time that the word "the" before the word "security" was intended to show that the taluk preserved was intended to be the only security. But that could not have been the intention of the legislature, for the owner of an under-tenure might have to pay more to save his under-tenure than the superior tenure which he obtains as a security is worth. In order, therefore, to give the owner of the under-tenure, who is compelled to pay money in order to save his under-tenure, a sufficient security, he must not only have the security of the tenure which he preserves, but also the right of action to recover the loan if he considers it necessary.

It appears that in this case the amount sued for is below Rupees 500, and that the suit is brought to recover simply a sum of money. There is, therefore, no appeal in this case. The appeal is, therefore, dismissed with the ordinary costs of the appeal.

This decision also governs Special Appeal No. 3,299 of 1868. The appeal is, therefore, dismissed with the ordinary costs of this appeal.

KEMP, J.—As I was one of the Judges who decided the case of *Kartick Surmah* v. *Bydonath Saeenee*,* I desire to say that I entirely concur in the judgment which has just been delivered by the

* 10 W. R., 205.

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Chief Justice. I was under the impression that the taluk which was protected from sale by the deposit made by the dar-patnidar, or sa-patnidar, as the case may be, was the only security the depositor had, and that a suit to recover the loan would not lie. I have no doubt that my opinion was wrong, and I concur in the conclusion at which my learned colleagues have now arrived.—*10th September* 1869.—*Bengal Law Reports, Vol. IV., Part XIX.*

PHEAR AND MITTER, J. J.

Iswarchandra Das, (one of the defendants,) *v.* Jugal Kishor Chuckerbutty, (plaintiff.)*

Ameen — Local investigation — Act VIII of 1859, *Section* 180.

Functions of an Ameen appointed to hold a local investigation, under Section 180, *Act VIII of* 1859, *discussed.*

Baboo *Bhairab Chandra Banerjee* for appellant.

The respondent did not appear.

THE facts are fully stated in the judgment of the Court, which was delivered by

PHEAR, J.—This is a suit to obtain a declaration of the plaintiff's right of possession to certain land as against the defendant. There are, therefore, two elements in the cause of this suit—first, the possession of the plaintiff; and secondly, his title as against the defendant to retain that possession. As far as we can judge from the written judgment of the Court below that Court was of opinion that the plaintiff had failed to show any title to the land as against the defendant. The words of the Judge are, "It appears that plaintiff has "failed to produce his title deed, the potta, "whereby to show that the lands in demand are "included within the taluk." Apparently some other inferior documentary evidence was put in for the purpose of supporting his title. But the Judge considered that even that evidence did not extend to the land in dispute. Under these circumstances it seems that the first Court sent an Ameen into the Mofussil, as the Subordinate Judge says, "to ascertain the real facts of right and possession, and the boundary of the place;" and the Judge remarks that the Munsiff did well in doing so. I quite agree with the pleader who has argued this case on behalf of the appellant that this proceeding is entirely unjustifiable. It really amounted to deputing the decision of this case to the Ameen. This Court has very many times, in reference to proceedings of this kind, expressed its opinion that Section 180 of the Civil Procedure Code does not warrant a Civil Court in deputing its functions to an Ameen whom it sends to the locality for the purpose of making a local investigation. All that it can charge the Ameen with is to obtain such information with regard to the physical features of the place in dispute, the identification of land depicted in maps with the parcels which are subject of the suit, the identification of maps with one another by the aid of objects to be found on the land, and other matters of this kind which may be of use in, and auxiliary to, the proper trial of the suit by the Court before which it is pending.

It is not very clear to my mind, from the judgment of the lower Appellate Court, to what extent that Court has relied upon the report which the Ameen, deputed in the way I have just mentioned, made to the Court. But I think I gather from it that the Subordinate Judge has found in that report the only evidence of title upon which the plaintiff has been allowed to succeed. In that report the Ameen states that it appears from the copy of a kabuliat filed by one of the defendants, whom he mentions, not the appellant, that a certain plot of land, a portion of which is in dispute, appertains to the *howla* of the plaintiff; and upon this statement of the Ameen the lower Appellate Court has based its judgment in favour of the plaintiff. The appellant objects to this statement being used in evidence against him, and I think that objection is good. It is obvious that this evidence, if evidence it can be called, is intrinsically of the weakest possible character, and, if it had been adduced and tendered in open Court, the appellant would have been entitled to object to it, and to require that it should be excluded. A copy of a kabuliat simply filed by one of his co-defendants certainly ought not to have been used in evidence against him without his consent; still less, if I may say so, ought the statements of the Ameen sent to make a local investigation with reference to the effects of this copy of the kabuliat to have been treated as anything upon which the Civil Court could act. I think, therefore, that the decree of the lower Court, so far as it was adverse to the appellant, was made without legal materials to support it, and that this appeal ought to be decreed. The decree of the lower Court must be reversed, and the suit be dismissed as against the appellant. The appellant will have his costs in all the Courts.—*19th January* 1870.—*Bengal Law Reports, Vol. IV, Part XXI, (Appendix).*

* Special Appeal, No. 2,328, of 1869, from a decree of the Subordinate Judge of Backergunge, dated the 29th June 1869, modifying a decree of the Munsiff of that district, dated the 20th June 1867.

PHEAR AND MITTER, J. J.

Ganga Gobind Sen, (defendant,) *v.* Gobind Chandra Roy and another, (plaintiffs.)*

Jurisdiction—Collector's Court.

Where a tenant had executed a kabuliat to four persons, HELD *two of them could not sue him for arrears of rent in the Collector's Court, making their other two co-sharers, or their representatives, defendants jointly with him.*

Ananda Chandra Ghosal for appellant.

Nalit Chandra Sen for respondents.

PHEAR, J.—In this case the defendant has executed a kabuliat to four persons jointly. Two of them sue him in the Collector's Court for arrears of rent, making their co-sharers, or the representatives of those co-sharers, defendants jointly with the tenant.

* Special Appeal, No. 2,433, of 1869, from a decree of the Officiating Judge of Tippera, dated the 25th August 1869, affirming a decree of the Deputy Collector of that district, dated the 31st May 1869.

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We think that a suit of this kind cannot be brought in the Collector's Court, because any decision passed on it would purport to determine a matter between co-sharers of property, and it is clear that the Collector has no power to give a decree of this kind. If all the parties who are jointly entitled to rent due under a kabuliat cannot agree to sue together in the Collector's Court, and one or more of them has such a right to a share as entitles him to recover it by suit, it must be by suit in the Civil Court, in which the decree will bind his co-sharers as well as the tenant, and give the tenant due protection against any claim which might be made by the other sharers of the estate.

The decree of the lower Courts must be reversed, and the plaintiff's suit must be dismissed. The appellant will get his costs in all the Courts. —*28th January* 1870.—*Idem.*

HIGH COURT—N. W. PROVINCES.

MORGAN, C. J., AND ROBERTS, TURNER, AND SPANKIE, J. J.

Act X of 1859, *Section* 3—*Suit by ryot for maintenance of possession*—

The provision of Section 23, *Act X of* 1859, *is no bar to the institution in the Civil Court of a suit by a ryot, farmer, or tenant, for maintenance of possession, nor to a suit to set aside a decree of a Revenue Court on the ground that it had been obtained by fraud.*

S. A. No. 758 *of* 1868.

Ramsewak Chowdhuree, (appellant,) *v.* Nuckchedee Singh and others, (respondents).

THIS was a special appeal from the decision of Mr. H. Lushington, the Civil Judge of Ghazeepoor, dated the 29th February 1868, reversing the decree of the Additional Subordinate Judge of Ghazeepoor, dated 29th June 1867.

Baboo *Pearey Mohun Banerjee* and Moulvie *Furreed-ood-deen Ahmud* for appellant, the plaintiff.

Meer Ali Ahmud and *Pundit Bishumbher Nath*, for respondents, the defendants.

This was referred to a Full Bench by Messrs. Pearson and Spankie, J. J.

By Full Bench.—Section 23, Act X of 1859, which enacts that all suits to recover occupancy or possession of any land, farm, or tenure from which a ryot, farmer or tenant, has been illegally ejected by the person entitled to receive rent for the same, shall be cognizable exclusively by the Collectors of land revenue, is clearly not a bar to the institution in the Civil Courts of the present suit in so far as the plaintiffs, not alleging such ejectment or asking for reinstatement, seek only to be maintained in possession of his holding; while that portion of the claim which seeks the cancelment of a Revenue Court decree, from the operation of which they apprehend injury, on the ground that it was obtained by fraud, is cognizable by the Civil Courts also. We cannot concur in the ruling of the Full Bench of the late Sudr Court, dated 5th August 1863, in the somewhat similar case (No. 579 of 1862) of Gurbhoo Misr (plaintiff) respondent *v.* Gowree and another (defendants) appellants, to the effect that the suit of the plaintiff who, not having been ousted from his holding but having reason to apprehend that he would be ousted in the execution of a decree which he alleged to have been obtained by the collusion of other parties in fraud of his right, claimed relief in the Civil Court was not cognizable by that Court.

We, therefore, reverse the decision of the lower Appellate Court, and remand the case for fresh disposal on the merits.

The costs of the appeal will follow the event. —*17th August* 1868.—*Reports of the High Court, N. W. Provinces, Vol. V.*

MORGAN, C. J., AND ROBERTS AND PEARSON, J. J.

Landlord and tenant — decision by competent authority—Collector no right to disturb—

Where the relative rights of the parties, as landlord and tenants, were determined by competent authority, and the matter referred for decision of the Collector was to commute the rents paid in kind into money rents, and that officer in so doing decided the rights of the parties, declaring the tenants sub-proprietors, and directing them to pay at the revenue rates with an addition of 5 *per cent. allowance to the landlord*—

HELD, *that in performance of the duty the Collector was not competent to alter the condition of the tenants instead of their rents, and to convert them from tenants into sub-proprietors.*

HELD *also that the order of the Collector was not an award of the nature contemplated by Clause* 6, *Section* 1, *Act XIV of* 1859, *and that the Lumberdar, notwithstanding his failure to set aside the order and his receipt of the amount so fixed, was not precluded from enhancing the rent on any of the grounds specified in Section* 17, *Act* X *of* 1859.

HELD *further that on true construction of the terms of the* wajib-ool-urz *with reference to the circumstances of the case, the defendant could not claim exemption from enhancement.*

S. A. No. 732 *of* 1868.

Bunsee and others, (appellants,) *v.* Ramsookh, (respondent.)

THIS was a special appeal from the decision of Mr. B. Sapte, the Civil Judge of Meerut,

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dated 28th February 1868, affirming the decree of Mr. Porter, Assistant Settlement Officer of Meerut, dated 19th November 1867.

Moulvie *Sumee-oollah* and Baboo *Pearey Mohun Banerjee* for appellants, the defendants.

Moonshee *Hanooman Pershad* and *Ishree Pershad* for respondent, the plaintiff.

By the proceedings of the Revenue authorities after the death of the *jaghiredar* and the lapse of the *jaghire*, the *jaghiredar's* heir was recognized as possessing a superior or *taluqdari* right in the mouzah (Pureechutgaon) to which this suit relates. At the same time the Thugga-cultivating community, of which the present plaintiff is, as a *Lumberdar*, one of the representative members, were found to possess the inferior or *mokudumee* right, and were admitted to engagements with the Government for the revenue, and to the management of the estate. Other classes of hereditary cultivators, including that to which the defendants in this suit belong, who had been in the habit of paying their rents in kind to the *jaghiredar*, then claimed to be allowed to pay their rents in future in money, instead of in kind, to the new *mokudums*. The claim was viewed with favour, and had the rents in kind been commuted into money rents in accordance with the instructions of the Sudr Board of Revenue, the relations between the parties to this suit would have clearly been those ordinarily subsisting between a landlord and tenants having a right of occupancy, and there would have been no room for the pleas now urged that the defendants were exempted from liability to enhancement of rent. But the Tahsildar who was charged with the execution of the Board's instructions not being able to get the Thugga *Lumberdars* and the hereditary tenants to agree as to the amount or rates of the proposed money rent, suggested to the Collector in a report, dated 31st December 1855, that some allowance should be made to the *Lumberdars* in the mode mentioned in Section 158 of the Directions to Settlement Officers, namely, by a percentage on the collections. On this report, which was endorsed by the Deputy Collector with an erroneous representation that the Tahsildar's suggestion was the request of the Thuggas, the Collector, on the 10th January 1856, in the absence of the parties, as it would seem, passed a summary order by which an allowance of 5 per cent on the *jumma* was assigned as the *huq* or right of the Thuggas; and ever since, as then fixed in pursuance of the order, the amount paid by the tenants as rent has been the amount payable as revenue to the Government on account of the lands comprised in their holding with an addition of 5 per cent. On the terms and operation of this order, and on the 21st para. of a *wajib-ool-urz*, subsequently drawn up in 1859, stating that the hereditary tenants in this village pay their rents like the proprietors and, so long as they shall continue to pay their rents, they and their heirs shall continue to cultivate their holdings, the defence of this suit, which is a suit for enhancement of the rents fixed in pursuance of the Collector's order, on the ground of an increase caused by canal irrigation in the productive power of the land, mainly rests. To that order the first ground of this appeal refers when it alleges that it was decided at the time of the settlement of the resumed *maafee* that the appellants should pay at revenue rates, and the decision cannot be now called in question, in advertence presumably to the provisions of Clause 6, Section 1, Act XIV of 1859.

It is to be observed that, when the Collector passed the order which is relied upon, he was not engaged in trying, for the purpose of determining, the respective rights or the relations to one another, of the Thuggas and the other classes of hereditary cultivators in the mouzah. These rights and these relations had already been determined and the duty which he had to perform was to fix a money rent to be paid by the latter, which should be the equivalent of the produce rent formerly paid by them. In the performance of this duty he was not competent to commute their *status* instead of their rent, and to convert them from tenants into sub-proprietors. There is certainly nothing in the terms of his order which indicates any intention on his part to adjudicate afresh as to their rights respecting which he made no fresh enquiry, or to recognize as sub-proprietors or co-partners persons who had been described in the report to the Sudr Board as hereditary tenants, and some of whom, among them the present defendant, had set up proprietary claims which had been rejected. Nor indeed is his order in its terms such an adjudication, although it may have operated in some degree in a way similar to that in which such an adjudication would have operated.

The only conclusion to which we can come is that this order was passed under a misconception of the nature of the case before him, and that he was misled by the Tahsildar or the Deputy Collector into supposing para. 158 of the Directions to Settlement Officers to be applicable to a case to which it was utterly irrelevant.

There is no reason to believe that the Thugga *Lumberdars* were aware that the case had been disposed of under a rule which is designed to provide for the remuneration of *Lumberdars* by their *Puttahdars* or sub-proprietors, and not for the commutation of rents payable by tenants to landlords. They would at first be disposed to look at the order as simply fixing

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the amount of rent demandable by them from their tenants, without troubling themselves much about the mode in which it had been fixed. We cannot assume, what is scarcely conceivable, that, by acquiescing in the order so far as to accept the rent thereby fixed, they meant to acknowledge their tenants as co-partners or sub-proprietors, or even to accept the rent so fixed as immutably fixed on a fixed principle and mutable only with any mutation of the *jumma*. It may be that subsequently to the date of the order they became sensible of the injury which it inflicted on them and may have yet refrained from seeking relief, because they did not feel sure whether they were legally entitled to any relief, at least before the expiry of the terms of the settlement.

The Assistant Settlement Officer, who tried this cause in the first instance, has justly remarked that it is not within the scope or design of commutation proceedings to confer any new rights on the parties or to fix rents in perpetuity. We are, however, unable to concur in the view taken by him that a rent at an advance of 5 per cent on the *jumma* was declared by the Collector to be a just valuation in money of the former rent in kind. It is clear that no attempt was made by that officer to ascertain the true money value of the average produce rent. Our view is, as above stated, that his order was a blunder, arising out of a misapprehension of the actual state of things; that it did not create, or declare, any new rights or relations different from those which had been already ascertained, but for the moment inadvertently assumed those rights and relations to be other than they had been ascertained to be; and that the Thugga *Lumberdars*, although so far bound by it that they cannot now claim a larger rent, on the ground of the larger value of the former produce rent, are not precluded from enhancing the rent on any of the grounds specified in Section 17, Act X of 1859. That order was not an award of the nature contemplated in Clause 6, Section 1, Act XIV of 1859. It was an adjudication of rent, not of right.

The second ground of appeal refers to a decision of a Bench of this Court, dated 5th December 1866, in a case between other parties in the same mouzah, in which the terms of para. 21 of the *wajib-ool-urz* of 1859 were held to bar a similar claim to enhance the rent. Although the objection urged is not strictly tenable, inasmuch as only the parties to that case are bound by the decision passed in it, it is perhaps more important to remark that the decision referred to proceeded on a version of the 21st paragraph of the *wajib-ool-urz*, which in this case has been pronounced to be erroneous, and that it was passed solely on the basis of that erroneous version, and without any reference to the earlier settlement proceedings of 1854, 1855, and 1856.

The third ground of appeal impugns the construction given to the abovementioned paragraph of the *wajib-ool-urz* of 1859 by the lower Courts. The Assistant Settlement Officer, whose view is adopted by the Zillah Judge, considers that the settlement with which the paragraph commences " that the hereditary tenants pay their rent like the proprietors" merely sets out the mode of collection, and that, while it records the fact that they do pay like proprietors, it does not make any provision or stipulation by which the amount of rent is limited in the future.

We are not prepared to say that the mode of collection is specially or exclusively referred to as the ground of the assimilation of the tenant to the proprietors. But we think the sentence must be interpreted in reference to, and in the light of, the previous proceedings. The words used represent with sufficient accuracy, though with brevity, the somewhat anomalous state of things which had resulted from those proceedings. The hereditary tenants had not been adjudged to be co-partners or sub-proprietors, and are, therefore, called hereditary tenants. But the Collector fixed the amount payable by them as rent much in the same way in which it would have been fixed had they been co-partners or sub-proprietors, and, therefore, in one sense it was truly said that they paid rent like the proprietors. Whether the Thugga *Puttahdars* pay 5 per cent in addition to the *jumma* of their holding, is not discoverable from the papers on the file ; and, therefore, we cannot say whether, in respect of the payments made to the *Lumberdars* by them and by the hereditary tenants, there is any difference or not. But, although the statement in the *wajib-ool-urz* may, in our opinion, be received as a substantially correct account of the facts as they existed at the time and had existed from the date of the Collector's order in 1856, we cannot hold that it places the parties in a position at all different from that in which they stood before the *wajib-ool-urz* was drawn out. If the present claim is not precluded by the order of 1856, it is not precluded by the 21st paragraph of the *wajib-ool-urz*. The second sentence of that paragraph, purporting that the tenants shall retain their holdings so long as they pay their rents, certainly does not bar the enhancement of their rents on grounds on which such enhancement is permitted by the law.

Nothing has been advanced in support of the 4th, the last ground of appeal, which indeed has not been pressed.

We affirm the decision of the Courts below, and dismiss the appeal with costs and interest at 6 per cent.—25*th August* 1868.—*Idem.*

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OFFICIAL PAPERS.

Export Duty on Rice and Indigo.

Proceedings of the Madras Government, Revenue Department, 19th February 1870.

Read the following Proceedings of the Board of Revenue, dated 31st January 1870, No. 704:—

Read the following letter from the Chairman of the Chamber of Commerce, to the Chief Secretary to Government, Fort Saint George, dated Madras, 19th January 1870, No. 22.

It will not have escaped the notice of Government that the subject of export duties, especially with reference to rice, has been exciting considerable attention both in Burmah and Bengal. Although the export rice trade of this Presidency does not at all approach that of Burmah, and is of far less importance both to the producer and the exporter, yet the Chamber is unwilling that a discussion as to the desirability of the duty should be allowed to go on without taking the opportunity of expressing an opinion on the subject.

2. So long ago as the 22nd April 1865 this Chamber availed of the Budget proposal of Sir Charles Trevelyan to protest against the policy of all export duties, and at the same time to direct special attention to the hardship that a rice duty is likely to inflict on the producers of the article, who are so situated that their protests never can attract public attention.

3. The Chamber cannot regret that a duty, which they condemned as being a tax falling entirely on the ryot, has so operated as to induce the powerful mercantile bodies of Burmah and Bengal to agitate for its abolition, and I am instructed to request that His Excellency the Governor in Council will convey to the Government of India this Chamber's entire disapproval of the tax, and their concurrence with the views against it, already submitted at great length to the Supreme Government.

4. The Chamber see no reason whatever to modify the opinion already expressed in their letter of five years ago as to the unsoundness of the political economy which prompts the retention or the imposition of export duties; and, in the case of rice, this opinion passes beyond the region of theory, for the practical effect of the duty is to protect the produce of other countries at the expense of India. Already India is shut out of all the consuming countries east of Singapore, seeing that its duty-paying rice cannot compete with the rice sent from Cochin, China, and Siam, and a reference to the statistics of the trade shows clearly that Bangkok and Saigon are already running India hard for the possession of the European markets.

5. On State grounds alone, therefore, the Chamber feel justified in urging a repeal, or, at least, an immense reduction, of the duty, for it is impossible to destroy or cripple a branch of the export without affecting the import trade of a country. The producers of the rice are the consumers of the duty-paying imports; and, if they cannot sell their produce, they can buy no goods, and the Customs returns will suffer far more than by any reduction or abolition of an export duty.

6. As already remarked, the subject of the rice duty is of minor importance to Madras, as so much of the grain grown here is consumed as food in the country. But the Chamber is very strongly of opinion that a repeal of the duty would give an impetus to the cultivation of grain; would consequently bring more money into the country; and would thereby add to the revenue of Government by increased land-tax, and a greater consumption of duty-paying imports.

7. While, however, rice is of small importance to Madras commerce, the Chamber would direct special attention to indigo—an article which is very valuable in itself—from which the ryot derives great profit, and the steady cultivation of which enriches every district in which it is produced. It is not to be expected that India should be allowed to have a monopoly of this article, and the fact is that every year the indigo of the Madras Presidency has to run a very close race for public favour with that produced in Guatamala. This Chamber entertain no doubt but that if Indian indigo continues to be weighted with the present duty, it will ultimately be cut out by the manufacture of other countries, and that then a repeal of the duty will come too late. The saltpetre trade in this Presidency is an instance of the effects of an export duty on an article which has competition from other countries, and the attempt to resuscitate the trade once killed by a removal of the duty has completely failed so far as Madras is concerned.

8. The Chamber trust that in what they have written they will have carried the Governor in Council along with them, and they beg that the views they have expressed may be forwarded to the Supreme Government with, if possible, a recommendation from this Government that these views be acted on, and that export duties, especially those on rice and indigo, should be at once done away with.

9. The time seems opportune to make a representation on this subject, as the rice trade of the year is just opening and the Budget for 1870-71 is no doubt now under consideration.

Referred to the Board of Revenue, who are requested to favour the Government with their views upon the questions adverted to by the Chamber of Commerce not later than the 1st proximo.

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

Fort St. George,
22nd January 1870.

In this memorial the Chamber of Commerce of Madras protest against the export duties on rice at 3 annas per maund, equivalent at present prices to about eight per cent *ad valorem*, and on indigo at Rupees 3 per maund, equivalent at present prices to about two-and-a-half per cent *ad valorem* on inferior qualities.

2. The facts and arguments against these duties put forward by the Chamber of Commerce are relevant and sound, and the Board are satisfied that, as regards both of these articles, the Madras Presidency enjoys no such advantage of production as neutralizes the risk of weighting them with export duty, especially in respect to the lower qualities of indigenous rice.

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3. The following statement shows the condition of the country in respect to rice cultivation in juxta-position with Trade Returns of rice exports during the twenty years last past:—

* Rice Cultivation.				Assessment.		
Years.	Acres.	Assessment.	Rate per acre.	Export.	Declared value.	Amount of duty.
		RS.	RS. A. P.	TONS.	RS.	RS.
1849-50	2,108,568	1,26,74,319	6 0 2	100,949	37,60,908	1,51,415
1850-51	2,176,503	1,33,90,982	6 2 5	115,495	42,61,290	1,61,322
1851-52	2,188,481	1,44,45,147	6 9 7	128,953	47,87,734	1,88,477
1852-53	2,342,195	1,50,69,597	6 6 11	136,137	49,28,107	2,07,523
1853-54	2,177,359	1,49,50,615	6 13 10	139,532	59,25,118	2,11,946
1854-55	2,308,808	1,51,67,313	6 9 1	106,406	47,81,074	1,52,579
1855-56	2,341,775	1,62,62,287	6 15 1	134,367	54,94,631	2,17,228
1856-57	2,520,912	1,66,52,057	6 9 8	120,750	51,19,522	1,99,488
1857-58	2,406,333	1,66,53,707	6 14 8	132,509	57,74,071	2,18,501
1858-59	2,599,939	1,85,84,766	7 2 4	92,961	43,92,164	92,179
1859-60	2,702,142	1,63,86,857	6 1 0	241,630	51,93,783	3,51,743
1860-61	2,682,392	1,57,89,595	5 14 2	131,597	61,80,741	4,39,903
1861-62	2,802,779	1,65,57,404	5 14 6	76,179	45,88,390	2,48,975
1862-63	2,974,919	1,75,21,243	5 14 2	64,041	44,85,438	2,01,355
1863-64	2,949,892	1,72,93,884	5 13 9	75,795	58,75,295	2,35,977
1864-65	2,924,044	1,69,44,279	5 12 8	72,299	60,61,255	2,26,017
1865-66	3,020,444	1,79,13,928	5 14 10	72,171	65,88,482	2,29,250
1866-67	3,092,429	1,81,92,450	5 14 2	75,491	83,78,954	2,33,024
1867-68	2,915,190	1,73,87,497	5 15 5	86,673	69,67,153	4,19,229
1868-69	2,968,784	1,76,70,224	5 15 3	88,119	69,11,079	4,48,075

4. From the above statement it appears that, while the cultivation of rice has advanced steadily from about two millions of acres in 1849-50 to three millions in 1868-69, or thirty-three per cent, to which something must be added for the effect of improved agriculture, rice, exports have fallen from Tons 124,200, the average of five years, from 1849-50 to 1853-54, to Tons 79,000, the average of the last five years. Population has increased, and there is a prosperous home-coasting trade in this article, but the Board are credibly informed that Madras rice has almost ceased to be exported to European and China markets as was formerly the case.

5. It will be observed that, besides the charges of a costly agriculture, Madras rice pays a land-tax of 6 rupees an acre, and contributes to the Imperial revenue one-and-three-quarter millions sterling. The Board are satisfied that an export duty on rice is especially to be deprecated in this country, and at this time.

6. Enormous sums of money are being expended by the State on irrigation works, and every effort is being made to extend irrigation to lands hitherto cultivated with any crops. The effect of this is, of course, to increase the production of rice at the expense of other crops; for, practically speaking, in this Presidency cultivation under irrigation means the cultivation of rice.

7. We are thus with one hand striving to increase the production of rice, and with the other imposing restrictions on the trade by which production is stimulated.

8. The Board are, therefore, satisfied that the high export duty on rice cannot be maintained without further seriously affecting trade and agriculture, and should at once be abandoned.

9. The Chamber of Commerce have taken this opportunity of urging the abolition of the export duty on indigo; the Board have, therefore, prepared the following statement showing the cultivation and export of indigo so far as their records afford the information:—

Indigo Cultivation.		Trade.		
Years.	Acres.	Export.	Declared value.	Amount of duty.
		CWT.	RS.	RS.
1849-50 ...	......	13,391	15,93,226	53,752
1850-51 ...	......	19,605	25,82,162	78,270
1851-52 ...	......	15,348	19,18,588	68,428
1852-53 ...	203,366	26,504	37,86,910	1,07,883
1853-54 ...	161,979	20,718	32,41,909	83,274
1854-55 ...	161,731	12,570	22,43,566	51,058
1855-56 ...	190,771	25,890	43,14,286	1,05,515
1856-57 ...	201,607	25,418	47,24,631	97,804
1857-58 ...	205,663	18,649	38,59,826	71,666
1858-59 ...	172,490	17,543	35,78,679	72,126
1859-60 ...	165,002	22,605	45,55,258	91,947
1860-61 ...	126,568	14,193	28,11,882	56,907
1861-62 ...	173,436	20,791	48,69,090	85,160
1862-63 ...	203,131	21,725	51,67,790	86,811
1863-64 ...	163,666	18,069	40,37,259	73,959
1864-65 ...	128,140	13,665	3,35,915	55,682
1865-66 ...	151,542	14,297	34,57,070	56,200
1866-67 ...	106,518	5,878	14,21,717	22,429
1867-68 ...	116,880	20,099	41,83,587	72,883
1868-69 ...	162,015	23,785	61,03,555.	94,169

* Zemindary areas are excluded.

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10. The above statement shows a backward and stagnant condition of the cultivation of indigo as well as the trade. The average acreage under indigo during the five years, from 1852-53 to 1856-57, was 183,900 acres and during the last five years 135,000 acres, while the export of indigo averaged during the first five years of the series cwt. 19,000, but has fallen to cwt. 15,500 on the average of the last five years. The last two years present a slightly improved appearance, but the Board learn from reliable sources that the import from Guatamala, mentioned in the letter of the Chamber of Commerce, into the English market have risen during the last six years from 18,000 maunds to nearly 50,000, with such improvement in quality that it now enters into direct competition with the highest qualities of Madras manufactured indigo, and threatens to equal in price the better qualities of Bengal indigo. Manilla indigo likewise now competes successfully in the European markets with the Madras product.

11. The production of indigo represents a special industry, which is of great value to the country. It attracts a large amount of English capital; it is grown in many places on soil which is not of much value for other crops, and the preparation of the article affords remunerative employment to a considerable number of the poorer classes all over the country.

12. The duty considered as an *ad valorem* charge is not high; but the Board are satisfied that, if it be maintained, serious consequences are likely to arise in respect to the average qualities of this article of foreign commerce and agricultural industry. The duty acts as a protective duty in favour of the produce of foreign countries, where far greater impetus has been given to production.

13. The Chamber of Commerce have justly instanced the disastrous consequence to the saltpetre trade of the export duty levied until the export ceased. The Board beg strongly to second the prayer of this memorial.

Order thereon, 19th February 1870, No. 244.

In the foregoing Proceedings the Board of Revenue express their concurrence in the views of the local Chamber of Commerce as to the expediency of the immediate repeal of the export duties on rice and indigo.

2. The Governor in Council concurs with the Board and the Chamber in deprecating the imposition of export duties, except under very exceptional circumstances, which do not exist with reference to the commodities under consideration. The tendency of export duties must necessarily be to restrict production, to reduce prices in the home market, and to limit the operations of foreign trade.

3. The Government do not, however, entirely share the sentiments of the Board and the Chamber with respect to the decided practical disadvantages which have actually resulted, or which may be apprehended from the maintenance of an export duty on rice in this Presidency. A reference to the returns furnished by the Board will convincingly show that the operation of an export duty has in this instance been counteracted by other powerful influences. Concurrently with the existence of the duty the area of rice cultivation has greatly increased, while the price has at the same time augmented. There has been no arrest of cultivation; there has been no glut of produce. A slight reduction in the extent of cultivation in the most recent years must undoubtedly be ascribed, not to the depressing influence of an export duty but to some local discouragements to wet cultivation and to the failure of local rains. The expansion of wet cultivation has been helped by a reduction of assessments and by State irrigation works; in the opinion of Government it is practically circumscribed by the water-supply alone. The profits of the cultivation are undeniable and abundant. The price is regulated and sustained by the home demand constantly rising with the increasing prosperity of the country. The Government believe that the causes which have so favourably affected this branch of cultivation in the past will continue to affect it in the future, and that the influence of the export duty in an opposite sense will in comparison be almost imperceptible. It seems not improbable to the Government that if the export duty was abolished the effect of the measure, as far as this part of India is concerned, would neither be felt in an increase of remuneration to the domestic producer nor in a reduction of price to the foreign consumer; but that the whole, or nearly the whole, of the amount now paid to the State would be paid to the exporter. In short, the prosperity of this Presidency is not materially affected by the impost complained of. It remains with the Government of India to determine whether the practical evil inflicted by the duty elsewhere is such as to justify the sacrifice of revenue which would be involved in the measure proposed. This Government would, of course, see the present reduction and eventual abrogation of the duty with satisfaction, but they cannot offer the interests of Madras as a preponderant argument in deciding the question.

4. The case of indigo is different. The value of this commodity is chiefly determined by foreign demand; the area of cultivation has diminished; it is a kind of industry less susceptible of development by public works and internal regulations than the cultivation of rice. It appears to this Government that the total repeal of the export duty would have a decidedly favourable effect on the production of indigo in this Presidency, and they venture to press the question upon the attention of the Government of India if the general sacrifice of revenue can be safely made.

5. It is observed that the statements embodied by the Board in their Proceedings, while giving the total exports of the whole Presidency, show only that portion of the rice cultivation which is held in seventeen districts on ryotwary tenure. If the cultivation in the districts of Malabar and Canara and that on Zemindary and Inam lands in all the districts were included, the area under rice would probably be found to be not much less than double the estimate given in the returns alluded

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to. These remarks apply, but in a less degree, to the return of indigo cultivation.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

Census of Madras Presidency.

Draft Memorandum of instructions for taking the Census of 1871.

In taking the next census of the Presidency, which is to be part of a general Imperial Census of the whole of British India, great care and accuracy will be required.

2. Since the Board's instructions of 1858 were prepared, several censuses have been taken in various parts of India, and valuable rules can be deduced from the record of the manner in which they were effected and the results. The report of the census of the North-West taken in 1865 is particularly instructive.

3. One most certain conclusion is taught by every census that has hitherto been taken in India, and that is that there must be a preliminary house-to-house enumeration, extending over a lengthened period.

4. In the first place statistics of villages and area must be collected. Every Curnum must be required to submit to the Tahsildar of his taluk a Village Return, showing the following particulars :—

Statistical Return of the Area and Assessment of the Village of   in the Talook of   of the   District.

		Acres.
Total area		
Area of Government land.	Assessed { Cultivated...	
	Assessed { Culturable...	
	Unassessed, including sites of villages, towns, road, etc.	
Area of Inam land		
	Total...	
Demand on account of land revenue, (Ryotwar)		
Average rate per acre on cultivated land.	{ Wet...	
	{ Dry...	
Quit-rent on Inams		

The figures must be those for Fusly 1278, and care must be taken to ensure their accuracy. Whenever it is possible the areas must be checked in communication with the Public Works Department, or by comparison with the accounts of the Settlement Department.

5. The Tahsildar will then compile from the Village Returns a taluk form thus :—

Statistical Return of the Area and Assessment of the Taluk of   in the District of

Names of villages.	Total area in acres.	Area of Government land. Assessed. Cultivated.	Area of Government land. Assessed. Culturable.	Area of Government land. Unassessed, including sites of villages, towns, roads, &c.	Area of Inam land.	Area of permanently settled estates.	Demand on account of land revenue (Ryotwar.)	Average rate per acre on cultivated land. Wet.	Average rate per acre on cultivated land. Dry.	Quit-rent on Inams.	Peishcush on permanently settled estates.
1	2	3	4	5	6	7	8	9	10	11	12
	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Rs. A. P.	Rs. A. P.	Rs.	Rs.

6. At the end of this Taluk Return must be entered any tracts populated by wandering tribes, &c., which may not be included in the Curnums' reports. The area of such tracts is generally unknown, but it may be estimated with considerable accuracy.

7. The statistics as to permanently settled estates, &c., must be ascertained by the Tahsildar from the Zemindary Curnums.

8. The returns will, in the case of the largest taluks, take from ten days to a fortnight to com-

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pile. They must then be forwarded to the Collector, who will abstract them talukwar thus :—

Statistical Return of the Area and Assessment of the District of

Names of Taluks.	Number of villages.	Area in square British Statute miles of 640 acres each.	Area in acres.	AREA OF GOVERNMENT LAND. Assessed. Culti-vated.	Cultur-able.	Unassessed, including sites of villages, towns, roads, &c.	Area of Inam land.	Area of perma-nently settled estates.	Demand on account of land-revenue (Ryot-war.)	AVERAGE RATE PER ACRE ON CULTIVATED LAND. Wet.	Dry.	Quit-rent on Inams.	Peish-cush on perma-nently settled estates.
1	2	3	4	5	6	7	8	9	10	11	12	13	14
				Acres.	Acres.	Acres.	Acres.	Acres.	Rs.	Rs. A. P.	Rs. A. P.	Rs.	Rs.

9. In the District Return the Collector must be careful to include any hilly tracts or semi-independent States which do not appear in the Tahsildar's statements.

10. These returns will be valuable in themselves, but they will be also indispensable in preparing for the census. Looked at in this light, their object is to provide that every portion of the country shall be duly registered and censused. The Tahsildar knowing the area of his taluk, and the Collector the area of his district, will be able to see that the combined village and taluk totals omit no forest land, thinly-peopled tract, hill country, or petty estate.

11. Both the Taluk and the District Returns must be submitted to the Board, in order that any obvious misapprehensions may be corrected. They will be returned as soon as possible, and the Village and Talukwar Returns should be sent back to the Tahsildars.

12. All this work may be well finished by the end of April.

13. The preliminary house-to-house enumeration must then be made. It will not be a difficult operation in the greater part of the Presidency where the houses are all collected in villages; but in some districts, such as Malabar, South Canara, and the Neilgherries, where the houses are often scattered and isolated, special arrangements will have to be made.

14. The Board will leave it to the Collectors to state the number of houses with which each enumerator should deal. In the North-West Provinces, the rule was to appoint one enumerator to every 100 houses. In villages containing less than 200 houses the Curnum and Munsiff will be the enumerators. In villages containing more houses assistants will have to be appointed. They should be selected from amongst the Mirassidars or officially recognized chief inhabitants. All officials in the Revenue Department will be available for this work, and their services must be utilized to the utmost. In towns special arrangements must be made. In Municipalities the Commissioners will be requested to undertake the census and superintend the enumerators. There should be about one supervisor to twenty enumerators. In agricultural districts the Revenue Inspectors will be supervisors; but, as there are not enough of them to perform the duty thoroughly, advantage should be taken of the presence of any European or Native gentleman who understands the nature and value of a census. There can be few such who will refuse at the request of the Collector to supervise the enumeration in their immediate neighbourhood. In all cases, however, the proportion of one enumerator to 100 houses must probably be the basis of the arrangement.

15. With regard to the question as to whether the enumerators should be paid, the Board, after full consideration, are of opinion that whenever servants of Government are thus employed, they must be considered as discharging a part of

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their official duty, and entitled to no extra pay for it. In the North-West it was found easy to get enumerators (in all agricultural districts) without pay, and the Board have no doubt it can be done here, but in towns some expense must probably be incurred.

16. Each enumerator will be supplied with the proper number (on the average 110) of copies of Forms A (population) and B (cattle), printed on the two sides of the same sheet of paper.

17. The forms will all be printed in Madras, and Collectors should indent for the number which will be required in each language as soon as possible.

A.

Village — *Street* — *Taluk* — *District*

Town — *Taluk* or — *District*

1		2	3	4	5	6	7	8	9	10	11
No. of the House.		Names of males above 12 years of age.	Number of boys under 12 years of age.	Religion or Caste.	Race.	Occupation.	No. of males able to read.	No. of males unable to read.	No. of females above 12 years of age.	No. of girls under 12 years of age.	Remarks.
Terraced or Tiled.	Thatched.										If a person is deaf or dumb, insane or blind, the fact should be noted in this column.

B.

No. of the House.	Elephants.	Camels.	Horses.	Country Ponies.	Mules.	Oxen.	Cows.	Buffaloes.		Asses.	Sheep.	Goats.
								Males.	Females.			

18. The preliminary enumeration will begin on the 1st July 1870, and should be finished before the 15th.

19. Every morning the enumerator will proceed from house to house, numbering them consecutively (by a number on the wall or door, of which advantage will be taken at the final enumeration) as he goes, and will at the same time fill in his forms. He will include only those who generally reside in the house, not guests who are there temporarily. If any house-owner desires to fill up his form himself he may do so; but in this case the enumerator must scrutinize the entries, and see that no mistake has been made. When his day's work is done he will send the forms filled up in a packet by the first convenient opportunity to the Revenue Inspector of his division or to the other supervisor, if any other supervisor has been appointed for him.

20. The Revenue Inspector and other supervisors will superintend the enumerators whilst at work and see that they understand their instruc-

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tions. When they receive the returns they will keep about ten per cent themselves, taking them from different parts of the division, and send the rest to the Tahsildar. Till the 15th of August they will diligently seize every opportunity of testing the forms they have kept, and will authenticate those they have examined themselves by their signature. If any enumerator's work seems to be incorrect, the Revenue Inspector or other supervisor will report the fact to the Tahsildar or Collector, and require the enumerators to do it all over again.

21. On the 1st September the Revenue Inspector or other supervisor will send all the reserved forms to the Tahsildar, and the Tahsildar will then, by himself and by confidential agents, test as many as he can of the returns (including some previously untested) from each Revenue Inspecter's division, and, when convinced that they are correct, he will stitch the returns of each village in book form in their proper order. The forms for each village will thus be kept separate in one or more volumes. The books will be transmitted to the Covenanted Officer or Deputy Collector to whom the Tahsildar is immediately subordinate not later than the 30th September.

22. During the month of October that officer will test such returns as he can in each taluk. When he is satisfied that the instructions have been correctly understood everywhere and that the forms have been properly filled up, he will send them back to the Tahsildars not later than the 1st November, and the Tahsildars will then redistribute them to the enumerators with a view to the final enumeration. It is of the last importance that this distribution shall be complete. Two months, the Board believe, will be ample time. It must be finished, and the Tahsildar must hold written acknowledgments of the receipt of the returns from each enumerator by the end of December. .

23. On the 10th of January 1871, the enumerators will proceed from house to house as rapidly as possible with the forms previously filled up, and correct the totals by the number of people who slept in such house or enclosure in the night. On this occasion the names and number of all guests, &c., who slept in the house that night, must be entered under the corrected return of the ordinary residents. The Board believe that there are no large festivals at this time of the year which will interfere with the census; but, if there are such in any district, the Collector should report the fact at once.

24. The reports after being tested, as far as the Collector thinks necessary, by Revenue Inspectors, unofficial Supervisors, Tahsildars, and Divisional Officers, will be transmitted by Collectors in original to the Board of Revenue. The village books prepared by the village return (paragraph 4) will be arranged in Taluk packages, and the talukwar return referred to in paragraph 5 will be sent in its proper package. In making up the package care must be taken that the returns for no village are missing. The compilation and tabulation of the returns will be effected in Madras.

25. All officers must be warned that throughout the whole of these operations the greatest vigilance and energy will be required, and that any negligence or inaccuracy will be severely visited on those who are responsible for it.

26. To assist in calculating the expense of the census the population may be classed thus :—

1. Inhabitants of Government villages.
2. Of Inam villages, Zemindaries, and petty States.
3. Of thinly-peopled tracts.
4. Of Municipalities.
5. Of Cantonments.
6. Houseless, Marine, Prison, Wandering, Chuttrum, etc.

27. In Government villages, Inam villages, Zemindaries, and petty States, very little expense need, in the Board's opinion, be incurred. In the case of proprietary villages the proprietor can generally be induced to do all that is necessary. In large villages where no Government officials can be found to do all the work, and no capable volunteers can be induced to undertake it, some expense must be incurred, and it must be calculated with reference to the remarks already made.

28. For thinly-peopled tracts, hilly country, &c., the Board must leave it to Collectors to say what arrangements are necessary.

29. In Municipalities the Commissioners can give great assistance in calculating the cost, but it must be remembered that *two* enumerations are required.

30. The houseless, wandering, and travelling population must be enumerated by the Police at the final enumeration only. In the case of ships, jails, &c., also the final enumeration is all that is required, and it can be done by the special officers concerned. It should take place at 9 P. M. on the night of the 19th January.

31. In cantonments a preliminary as well as a final enumeration is necessary, and the Commanding Officers will arrange for its being done.

32. As it is of the greatest importance that the estimated expense should be known to the Board before the budget of charges is disposed of by Government, Collectors are requested to telegraph the amount which they estimate will be required for their districts at the earliest moment possible. A detailed report should follow.

33. An extract from Mr. Plowden's report on the census of the North-Western Provinces taken in 1865 is subjoined for the information of the Collectors.*

(Signed) J. GROSE,
Sub-Secretary.

Order of Government thereon, 24th February 1870.

With their Sub-Secretary's letter, dated 26th October 1869, No. 7,949, the Board submit a very well-digested scheme, modelled upon the method followed in the North-Western Provinces, for taking the census of 1871, which the Government will now proceed to review. In so doing it will be necessary to make occasional reference to the instructions conveyed in Proceedings of the Government of India, dated 20th October 1869, No. 4,799, which were received after the Board had drawn up their memorandum.

2. As a preliminary measure the Board propose the compilation, through the agency of the Curnums and Tahsildars, of statistical returns, particularising the area and assessment of each dis-

* This extract is here omitted—Ed. *R. R.*

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trict. These returns are to be submitted to the Board in order that any obvious misapprehensions may be corrected, but will be returned to the District Officers in order that the latter may have them at their disposal while revising the census. It is estimated that all work under this head will be finished by the end of April.

3. The Government agree with the Board in attaching great importance to this scheme, both as a step towards the census and as a means of obtaining information valuable in itself. They consider that it ought to be carried further, and that, simultaneously with the preparation of the returns, arrangements should be made for framing a *house register* of each village. This register will, of course, be the work of the village officers. The Government of India, in their Resolution alluded to above, declare a preference for registering by enclosures rather than by houses. This should be borne in mind, and the name of the chief person residing in the enclosure should be added for purposes of identification. Each enclosure should further be distinguished by a number, which might be at once affixed to it instead of during the preliminary census. The Revenue Inspectors and other supervising officers should thoroughly and separately test the accuracy of each house register before it is submitted, through the Tahsildar, to the Collector. The forms to be distributed to the enumerators will then be numbered and headed so as to correspond with the house registers.

4. By this means additional security for the inclusion of every house in the census returns will be attained, for, while the enumeration forms are in process of collection, they can be compared with the house registers; and, if the latter have been correctly framed, any deficiency in the number of the former will be at once detected. It must be remembered that the system described by the Board in paragraph 20 merely furnishes a test as to the intrinsic accuracy of the enumeration forms themselves, or rather of that small proportion of them which are to be retained by the supervisors for revision, but does not secure their numerical completeness.

5. As regards the returns of area and assessment, the Government are of opinion that they should exhibit the data on which they are prepared, *i. e.*, whether on mere estimate or Curnums' measurement, or on the measurement of any known survey, and that the same distinction should be preserved in compiling the returns. Unless this plan be adopted the large proportion of calculations, which are based on guess work or tradition, if allowed to exercise an equal influence in striking a general average, will neutralize the elaborated results of scientific survey, while, in order that the returns may possess their maximum of utility, it is even more necessary that they should afford the means of comparing the rates of assessment imposed according to diverse systems than those obtaining in different districts.

6. This introductory process, which is described by the Board in paragraphs 4 to 11, being concluded, the prosecution of the census commences. The scheme advocated by the Board is well devised, in that it combines the advantages of a one-day enumeration with those belonging to an enumeration extending over a longer period. It is open to criticism, because the functions of the enumerator are fulfilled by one and the same person with no check, save that of general supervision and the supposed scrutiny of a percentage of the enumeration forms. A double test of accuracy such as the Census Committee for the town of Madras propose to employ by the appointment in direct furtherance of the census of "indicators" as well as "enumerators" is not contained in the Board's scheme. The Government are, however, convinced that the Board have rightly estimated the agency at their disposal in the rural districts, and that in such it is better to trust to the best qualified village officers under such supervision as can be brought to bear upon them, than to introduce an inharmonious element for the sake of an additional check. But for the larger towns it will probably be advisable to follow as closely as possible the system which may be hereafter decided on for the town of Madras. The Proceedings of Government relating to this subject will, therefore, be communicated to the Board and to all Collectors.

7. The Board propose that the preliminary enumeration, for which a fortnight is allowed, should begin on the 1st July 1870 and be finished before the 15th of the same month, and that the final or one-day census should be conducted on the 10th January 1871. A period of six months is thus interposed between the two enumerations. The longer this period is the more embarrassing will be the task imposed upon the enumerators at the final census, and the Government consider that an interval of three months will be quite long enough. During the month of October, however, the Revenue Inspectors and Village Officers are busied in recording and checking the cultivation. The latter fortnight in September would, therefore, in the opinion of the Government, be the best period to fix on for the preliminary census.

8. The Government of India, in their Proceedings alluded to above, have especially noticed the difficulties which may arise from the unwillingness of householders to afford the requisite particulars regarding the female members of their families. To such they would allow a choice between three modes of satisfying the requirements of the enumerator, and, in illustration of their plan, they have forwarded three separate specimen forms, each filled up for an imaginary family according to one of three different methods. In the first form the females are particularised by name and attributes with the same exactitude as are the males; the second resembles the first in every respect, except that a figure is substituted for a name in the case of each female; in the third form the females are not entered individually either by name or by means of a figure, but they are classified comprehensively according to distinctions of age, caste, etc. The necessity of calling in the third form depends on the percentage of householders who, while averse to furnishing the enumerator with the precise age of, and the other requisite information regarding, each individual female inmate of their houses, a figure being substituted for her name, are nevertheless willing to declare the total number of female inmates—to state the number falling respectively within certain limits of age, which are distinguished from one another by periods of ten years—and further to classify them according to religion, caste, nationality, &c. In this Presidency it is not probable that the percentage referred to would be large, and, if a choice between the three methods proposed by the

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Government of India be allowed, it will necessitate the appendage of a separate tabular form to *all* the enumeration sheets, thereby increasing the size of the sheets and seriously adding to the cost of printing. The Government are of opinion that all sources of irritation will be avoided if column 10 of the enumeration forms sent by the Government of India be headed "name, designation, or number" and the option of representing females by a figure be allowed to heads of households who object to mentioning their names or declaring their relationship. The Government of India will, therefore, be addressed on the subject.

9. In other respects the form adopted by the Government of India should be employed, and under their orders the "B. form" proposed by the Board for cattle, &c., is unnecessary. The classification of houses as "terraced" or "tiled" will answer the headings "of the better sort" and "of the inferior sort" proposed by the Government of India.

10. In large zemindaries it is obviously of the first importance that the cordial co-operation of the zemindar himself should be secured, and with this end the Government propose to issue circulars to all Zemindars of position. The functions assigned by the Board to Government Tahsildars might be performed in zemindaries by Sub-Magistrates, but it is the intention of the Government to request the Zemindars to render their Revenue establishment available for purposes of the census.

11. The Government do not agree in the opinion expressed by the Board (*vide* paragraph 20 of their Proceedings) that the census of the houseless and wandering population should be left to the Police. The training which the Police have received hardly fits them for duty of this nature, and they are besides too sparsely scattered over a wide extent of country to undertake it effectually. No better plan for conducting the census of the vagrant classes suggests itself to the Government than that they should be numbered with the rest of the population by the village officers but at the final enumeration only.

12. Where a Military cantonment is included within the bounds of a municipality, the Government consider that the census of the former should appear in the returns of the latter. The Military authorities should, however, afford every assistance in their power. Orders on this subject will be issued in the Military Department.

13. The remaining propositions of the Board appear to the Government to be judicious. Tabulation is only cursorily adverted to, but this is a matter which may well be left for after-consideration. As soon as the Board have decided on the form which they propose to adopt it should be submitted for the approval of Government.

14. The Government would urge strongly upon all Collectors the necessity of disabusing the popular mind of all misapprehension as to the objects of a census. No opportunity should be lost of bringing home to all classes of natives the fact that it is not designed as a step towards increased taxation.

15. Lastly, the Government would remind the District Officers that all minor excellencies and defects in a scheme which only exists upon paper are of little weight when compared with the zeal and energy brought to bear by those who carry it into execution. The Government believe that by far the greater number of their officers will take a personal interest in the matter, and, if this expectation be fulfilled, a more successful census than has yet been carried out in the Madras Presidency may reasonably be looked for.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

GUM RESIN IN SOUTH CANARA.

Proceedings of the Madras Government, Revenue Department, 29*th March* 1870.

Read the following Proceedings of the Board of Revenue, dated 12th February 1870, No. 1,021:—

Read the following letter from H. S. THOMAS, Esq., Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Uppinangadi Talook, 22nd November 1869, No. 1,493.

Considering the importance attached by Government to the useful products of the Indian forests, I have the honour to bring to the notice of the Board a gum resin which does not appear to have hitherto attracted attention, was not mentioned in Government Order, 30th April 1869,* No. 1,179, and can be easily and largely obtained from the jungles of this district.

*Board's Proceedings, 17th May 1869.

2. In May last, a small quantity of light coloured resin was brought to me by one Sashithal Mahdeva, a land-owner of the Mangalore Talook, as having been gathered from the "Karmara"† trees in a jungle lately given him on durkhast. The "Karmara" is a wild tree found abundantly in many jungles in the district. It grows rapidly to the height of about twenty or even thirty feet; but, being a valuable firewood easily re-asserting itself when cut, it is often felled by the people much earlier, especially when growing on Kumaki land.

† Hopea Wightianna.

3. Not being previously acquainted with this product, I forwarded a specimen of the resin to Mr. Broughton, the Government Quinologist, who kindly undertook to examine its chemical properties for me, and I beg to enclose, for the Board's information, a copy of his letter showing the result of his examination with reference to its profitable applications and commercial value.

4. Mr. Broughton considers the gum well suited for the preparation of varnishes; that it possesses certain advantages over many other resins ordinarily used by the varnish-maker; and that its intrinsic properties render the prospect of its becoming an article of commerce encouraging.

5. As the cost‡ of the resin, with reference to which Mr. Broughton has calculated its commercial value, is what was actually incurred in gathering and conveying to Mangalore only about a maund, I think it might be delivered on the coast still cheaper if collected in large quantities; and, as the "Karmara" is abundantly found in the jungles of this district, the resin may also be available for exportation. I hope it will prove a valuable addition to the list of useful gum resins of South Canara.

‡ Rupees 5-8-0.

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ENCLOSURE No. 1.

From R. BROUGHTON, Esq., Quinologist to Government, to the Collector of South Canara, dated Ootacamund, 14th July 1869.

I have examined at your desire the resin I have had the honour to receive from you with reference to its profitable applications and commercial value.

2. I am ignorant of the name of the tree which produces it, but the resin in some respects resembles that of the Sal tree. It is, however, in appearance superior to that resin.

3. The comparatively higher price precludes the use of the resin for any of the coarser applications of substances of its class. With colophony at 7*s.* 6*d.* per cwt., no profit could accrue from the exportation of Indian resins for these uses.

4. It is, therefore, mainly for the preparation of varnishes that the resin has any likelihood of application. For this it appears well suited on the whole. It is of a light colour, and the better pieces are transparent and break with clean fracture. It fuses to a beautiful transparent mass resembling amber.

5. It is not fitted for the preparation of spirit varnishes, being only partially soluble in alcohol; but it dissolves readily in benzol and chloroform, and these solutions yield a rapidly drying and quite transparent and colourless varnish. It dissolves readily in oil of turpentine and boiled linseed oil. The varnish prepared by these means is transparent, and after some days' exposure dries colourless and hard.

6. The readiness with which it dissolves in the usual solvents, and the purity and transparency of its solutions, appear to render it of value and give it some advantages over many resins ordinarily used by the varnish-maker. It must be recollected that it approaches the latter in cost, and hence the profits of its introduction to the European markets are not likely to be great even if its merits were at once recognized. I cannot, however, but think that its intrinsic properties render the prospect of its becoming an article of commerce encouraging.

7. The specimens should be chosen as colourless as possible. The coarser pieces should be freed from mechanical impurities by fusion (taking care not to raise the temperature too high) and subsequently passing through fine wire gauze.

Communicated for the information of Government. Mr. Thomas' letter and the Government Quinologist's report are interesting, and the Board presume Mr. Thomas will give orders for collecting a somewhat larger amount to admit of the cost being more correctly estimated and further trial of the article being made. Mr. Thomas should make arrangement for getting a fair sample sent home to English brokers through one of the enterprizing merchants on the coast in order to bring it to notice and test its true commercial value. He will report further after learning the result of the examination in England. A copy of Mr. Broughton's letter might be given to any one willing to export on trial.

Order thereon, 29th March 1870, No. 406.

The proceedings of the Board are approved.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

HONEY ROCKS ON THE SHERVAROYS.

Proceedings of the Madras Government, Revenue Department, 13th April 1870.

Read the following Proceedings of the Board of Revenue, dated 20th January 1870:—

Read the following letter from the Collector of Salem, to the Acting Secretary to the Board of Revenue, dated Salem, 22nd December 1869, No. 289.

I have the honour to solicit the Board's instructions in the following matter.

2. There are five rocks on the Shervaroy Hills known as Honey Rocks. Up to within the last twelve or fourteen months it was usual to rent out by Government the right of collecting the honey. On the receipt of the Government orders prohibiting the renting of such farms the practice was discontinued. Ever since this has been done there has been constant fights and disputes among the Malayalies, whole villages turning out to assert their right by might, one party asserting their priority of right to another. There have been several magisterial complaints in the matter. I have received frequent petitions from the different villages asking that the rock may as usual be put up to auction and rented out. The Government issued their order above referred to evidently considering that it was a hardship to the hill and jungle tribes up and down the country to make them pay for such a jungle produce as honey, dammer, wax, &c. As the Malayalies on the Shervaroy Hills petitioned themselves to have the right of collecting honey rented to them by Government, I see no objection whatever; and, as it will be the only way to put a stop to the present fights and quarrels, I request that sanction may be accorded in this instance to lease out the Honey Rocks in question; or, in other words, accede to the request of the hill tribes of the Shervaroys.

Submitted for the orders of Government. The general principle of relinquishing petty items of forest revenue will not be affected by leasing out the right of collecting honey in the case referred to by the Collector, and it seems to be obviously desirable that this measure should be adopted.

Order thereon, 13th April 1870, No. 526.

Under the special circumstances noticed by the Collector the Government authorize him to lease out the right of collecting honey on the "Honey Rocks" of the Shervaroy Hills.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

WILLS NOT SUBJECT TO STAMP DUTY.

Proceedings of the Madras Government, Revenue Department, 11th February 1870.

Read the following Proceedings of the Government of India, Financial Department, (Separate Revenue—Stamps,) dated Fort William, 24th January 1870, No. 707:—

Read the following Memorandum by W. STOKES, Esq., Secretary to the Council of the Governor-General for making Laws and Regulations, dated 15th January 1870, No. 38.

In returning the original papers received from the Financial Department under cover of endorse-

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ment, No. 351, dated 13th instant, relative to the question raised by the Financial Commissioner of Oudh whether wills are liable to stamp duty under Act XVIII of 1869, the undersigned is directed to state that Act XVIII of 1869 does not, and was not intended, to apply to wills.

2. Wills were specially exempted in Act X of 1862, apparently because there was a general clause (No. 36) in Schedule A. to that Act imposing a 1 rupee stamp on all deeds not otherwise charged or expressly exempted. But this general clause was intentionally omitted in the present Act, and the insertion of the special exemption was, therefore, unnecessary.

3. The Financial Commissioner might be told that not only wills but deeds of dower not affecting immovable property are now exempt from Stamp duty; in fact, no instruments are chargeable except those specified in the Schedules to Act XVIII of 1869.

Copy forwarded to the Chief Commissioner, Oudh, for information, in reply to his Secretary's letter, No. 2, dated 3rd January 1870.

Copy also forwarded to the other local Governments and Administrations for information and guidance, and published in the *Gazette of India*.

(Signed) G. H. M. BATTEN,
Under-Secy. to the Govt. of India.

Order thereon, 11th February 1870, No. 193.
Communicated to the Board of Revenue.
(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

ACT OF THE GOVERNMENT OF MADRAS.

The following Act of the Governor of Fort Saint George in Council received the assent of His Excellency the Viceroy and Governor-General on the 13th May 1870, and is hereby promulgated for general information :—

ACT No. I. OF 1870.

An Act to provide for the collection of tolls and license fees on canals, lines of navigation and ferries, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency.

Preamble.

Whereas it is expedient to provide for the collection of tolls and license fees on canals, lines of nagivation and ferries, and to provide for the management of ferries and the construction and improvement of lines of navigation in the Madras Presidency; It is enacted as follows :—

Interpretation.

1. The following words shall have the several meanings hereby assigned to them, unless where a contrary intention shall appear from the context, that is to say—

"Vessel."

The word "vessel" shall include any ship, barge, boat, raft, timber, bamboos, or floating materials, propelled in any manner.

"Line of navigation."

The words "line of navigation" shall mean any navigable channel subject to the provisions of this Act.

"Channel."

The word "channel" shall include any river, canal, or water-way, whether natural or artificial.

What navigable channels or ferries may be rendered subject to the provisions of this Act.

2. It shall be lawful for the Madras Government, from time to time, by notification to that effect published in the *Fort Saint George Gazette* and in the *Gazette* of the district to which the notification shall apply, to declare that the provisions of this Act shall apply to any navigable channel or ferry specified in such notification, and, from and after such publication, the provisions of this Act shall apply to, and be in force as regards, such navigable channel or ferry.

By whom navigable channels may be made.

3. It shall be lawful for the Madras Government, from time to time, to authorize any person to make and open any navigable channel, or to clear and deepen any navigable channel, and to stop any water-course, or make any tracking path, or do any other act necessary for the making or improvement of any such channel; and any navigable channel made or improved under this section shall be rendered subject to the provisions of this Act in the manner prescribed in the last preceding section.

Mode of obtaining land for the purpose.

The said Government may take possession, as for a public purpose, of any land that may be necessary for the execution of any of the abovementioned works, under the provisions of Act VI of 1857, *(An Act for the acquisition of land for public purposes,)* or of any other Act that may now or hereafter be in force for the taking possession of land for public purposes.

Tolls to be paid on lines of navigation subject to this Act.

4. All vessels entering upon, or passing along, any of the lines of navigation subject to the provisions of this Act, shall pay tolls or annual license fees, at such rates as shall be fixed in manner hereinafter mentioned. Payment of the license fee shall exempt the vessel so licensed from all tolls payable under this Act upon any line of navigation during the period for which such license is in force.

The Government may fix, and alter rates of toll.

5. The Madras Government may fix, and, from time to time, alter the rates at which such tolls or license fees shall be levied. Provided that no toll or fee shall be levied, and no alteration of any rate of toll or fee shall have effect, until notice shall have been published in the *Fort Saint George Gazette* and the *Gazette* of the district to which such notice applies, for such period as the said Government may fix, of the intention to levy or alter such toll, or to impose or vary such fee, and of the rate and place at which such toll or fee is to be levied or made payable.

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Notification of rate of toll to be exhibited at every Toll-house.

6. Notification of the rates of toll and license fee, and of the places of collection, in English and in the vernacular language of the district, shall be at all times exhibited to public view at every Toll-house where toll is levied under this Act.

Government may appoint persons to collect tolls, and the collection of tolls may be leased out.

7. The Madras Government shall appoint such persons as it may think fit to collect tolls or license fees under this Act, or may lease out the collection of tolls and license fees to any other person. The lessee or his duly authorized agent shall be empowered to collect the tolls or fees in the like manner as any person appointed as aforesaid.

Payment of tolls how to be enforced.

8. If any toll or license fee due under the provisions of this Act in respect of any vessel shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such vessel and any furniture thereof, and to detain the same; and such persons shall, within twenty-four hours of such seizure and detention, report the same to the Collector of the district in which the seizure has been made or other public officer duly authorized by Government in that behalf; and, on receipt of this report, the Collector, or other officer as aforesaid, shall publish a notice appointing a day for the sale of the said vessel and any furniture thereof. The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale; and, if the toll or fee and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector, or other officer as aforesaid, such officer shall sell the vessel and furniture seized, or so much thereof as may be approximately necessary to pay the toll or fee, and also any expenses occasioned by non-payment. So much of the property seized as may not have been sold, and so much of the sale proceeds as may be in excess of the sum necessary for satisfying the toll or fee and for defraying the expenses occasioned by non-payment, shall be returned to the person in charge of the vessel.

Appointment of Supervisor with power to remove obstructions.

9. It shall be lawful for the Madras Government to appoint any person to be the Supervisor of any line of navigation subject to the provisions of this Act, and such person shall be empowered to cut down and remove any tree which may have fallen, or may be likely to fall, into such line of navigation, and to remove any sunken vessel, and to prevent or remove any other nuisance or obstruction to navigation, of whatever description, whenever he may think it necessary.

Mode of exercising such power.

10. Whenever such Supervisor shall consider that the cutting down and removal of any tree, or the removal of any other obstruction, is necessary, he may, in cases of emergency, at once remove the same, and may for that purpose enter on any private property. In cases not of an emergent nature he shall serve a notice in writing on the owner or occupier of such private property, or on some adult member or servant of his family, directing him to remove the same within a reasonable time. If the notice cannot be so served, it may be affixed on some conspicuous part of his last known place of abode, or of the nearest village. If the owner or occupier shall not remove the obstruction within the time given in the notice, the Supervisor may proceed to remove it himself, and may for that purpose enter on any private property. Payment of all expenses of such removal may be enforced by the sale of the thing removed in the manner provided for the recovery of tolls in Section 8 of this Act, or, if such sale proceeds are insufficient, the balance may be recovered in the manner prescribed in the case of an arrear of revenue under Madras Act II of 1864.

Supervisor may forbid the construction of fishing contrivances, &c.

11. Whenever, in the opinion of such Supervisor, the construction of any contrivance for fishing, or for any other purpose, in any line of navigation is likely to cause obstruction to the free and safe transit of such line of navigation, he may, by a notice in writing to be served on the owner or person in charge of such contrivance, in the manner prescribed in the previous section, forbid the construction or continuance of such contrivance.

Penalty for causing obstruction to line of navigation.

12. Any person who shall wilfully cause, or shall aid in causing, any obstruction to any line of navigation, or any damage to the banks or works of such line of navigation, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished, on conviction before a Magistrate, with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction, or in repairing such damage.

Proviso.

Provided always that nothing in this section shall be held to affect cases which would be punishable under Section 431 of the Indian Penal Code.

Government to establish ferries and license ferry-boats.

13. It shall be lawful for the Madras Government to establish ferries across any channel at such points as may be selected, and to maintain or to license boats or rafts for the conveyance of passengers, goods, carriages, carts, palanquins, or animals across such ferries, and to forbid, within such limits as may be prescribed, the transport of passengers, goods, carriages, carts, palanquins, or animals across such channel in any boats or rafts, except, such as are maintained or licensed as aforesaid.

Government to fix rates, license fees, and tolls.

14. Whenever any such ferry shall have been established, it shall be lawful for the Government, from time to time, to fix and vary the fees payable to Government by the owners of licensed ferry-boats or rafts, and also the tolls payable for the conveyance of passengers, goods, carriages,

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carts, palanquins, or animals across such ferry. A notification of such tolls shall be at all times exhibited to public views on each side of the ferry in English and in the vernacular language of the district.

Table of tolls.

15. The Government shall be authorized to appoint all necessary persons to take charge of, and manage, such ferries and ferry boats or rafts, and to collect the license fees and tolls payable at such ferries. It shall also be lawful for the Government to lease out the right of maintaining or licensing such ferry boats or rafts, and levying such tolls; and the lessee, or his duly authorized agent, shall thereupon be empowered to collect and receive such license fees and tolls in the same manner as any person appointed as aforesaid.

Management of ferries and collection of license fees and tolls.

16. In case of non-payment of toll on demand, the person authorized to collect such toll shall be empowered to seize any goods, carriage, cart, palanquin, or animal chargeable with such toll, and to proceed to sell the same in the manner prescribed by Section 8 of this Act.

Penalty for non-payment of toll.

17. When any ferry shall have been leased out, it shall be lawful for the Government, from time to time, to require security to be deposited by the lessee for the maintenance of proper boats, rafts, servants, and appliances. It shall be lawful for any Revenue Officer authorized by the Collector in that behalf, from time to time, to inspect such boats, rafts, servants, and appliances, and to satisfy himself as to their fitness or otherwise for the business of the ferry, and to report thereon to the Collector of the district.

Security may be required from lessee of ferries.

Inspection of ferries leased out.

18. Whenever the Collector shall be satisfied that the boats, rafts, servants, or appliances of any ferry which has been leased out are unsafe or insufficient, he shall call upon the lessee to make good the defect within a reasonable time which shall be specified in the notice, and shall inform him that, at the expiration of such time, he will be liable, in the event of non-compliance, to have his lease cancelled, or to have the deficiency complained of made good at his own expense. If the lessee shall not comply with the terms of the notice, the Collector shall be at liberty to make good the deficiency at the expense of the lessee, or, with the sanction of the Board of Revenue, to cancel his lease.

Procedure in case of defective management of ferries leased out.

19. Where the Collector shall have incurred any expense on behalf of the lessee under the preceding section, it shall be lawful for him either to deduct the same from the security deposited by the lessee, or to recover the amount in the manner provided for in the case of an arrear of land revenue by Madras Act II of 1864.

Recovery of expenses incurred on account of defaulting lessee.

20. The Madras Government shall be authorized, by notice to be published in the manner directed by Section 5, to declare that any ferry hitherto in use shall no longer exist. But, whenever the Government shall think fit to abolish any ferry in which any person shall have acquired a legal interest, or to establish a new ferry within such a distance of such previous ferry as materially to diminish its income, the owner of such ferry shall be entitled to compensation for the injury done to his vested rights. Such compensation shall be assessed and satisfied, as nearly as possible, by the same procedure as if the ferry were land which had been taken possession of by Government for public purposes under Act VI of 1857, *(An Act for the acquisition of land for public purposes,)* or under any other Act that may now or hereafter be in force for the taking possession of land for public purposes. Provided always that any compensation payable under this section shall be satisfied out of the proceeds of the Canal and Ferry Fund hereinafter mentioned.

Power to abolish any existing ferry and to grant compensation in respect thereof.

21. No action or suit shall be brought against the Secretary of State for India in Council or the Government in respect of any injury or damage caused by, or resulting from, any act done under Section 3 or under the last preceding section.

No action to lie against Government in respect of acts done in pursuance of Sections 3 and 20.

22. It shall be lawful for the Madras Government, from time to time, to make rules not repugnant to any law in force, for the management of any line of navigation or ferry subject to this Act, and for regulating the conduct of persons employed for any of the purposes of this Act, and to repeal, alter, and amend the same; and the said Government may affix fines as penalties for the infringement of such rules, not exceeding fifty rupees for any one infringement, or five rupees a day for any continuing infringement.

Rules relating to lines of navigation.

Such rules may contain directions for any of the following, amongst other, matters:—

For determining the tonnage of vessels and their measurement; for fixing the number and the width of vessels to be allowed to pass into, or out of, or through, any line of navigation at one time or abreast; for determining the length of time during which vessels may remain stationary on any line of navigation, and the amount of demurrage to be paid by vessels remaining stationary beyond such time; for regulating the mode in which, and the places at which, tolls or license fees are to be levied under this Act; for the removal of sunken vessels and obstructions; and for the storing, custody, and disposal of the cargo of vessels, or of any animal or thing seized under this Act.

23. Rules shall not be passed until the same shall have been published in the *Fort Saint George Gazette* and in the *Gazette* of any district to which they may apply, for a period of six weeks, and, after that time, the rules shall be published as passed

Publication of such rules.

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with such alterations, if any, as to the Madras Government shall seem fit. The rules so published as passed shall not have effect until the expiration of two weeks after such last publication, and all rules so published shall, until the same be repealed or altered, be of like effect as if they were inserted in this Act. Copies of all rules in English and in the vernacular language of the district shall be exhibited to public view at every place where tolls or license fees are collected.

Penalty for evasion of toll.

24. Any person who shall refuse to pay, or evade, or attempt to evade, the payment of any toll or license fee due under this Act, or shall infringe any right of ferry, shall be punished, on conviction before a Magistrate, with a fine which may extend to fifty rupees, or with simple imprisonment, in lieu of fine, which may extend to one month.

Penalty for unauthorized levy of toll, &c.

25. Any person, other than the persons authorized under this Act, who shall levy or demand any tolls or license fees, and also every person who shall knowingly demand any higher toll or license fee than this Act permits, or who shall, under colour of this Act, detain, seize, or sell any property or animal, knowing such detention, seizure, or sale to be unlawful, or shall wilfully fail to comply with all the requirements of Section 8, or shall in any manner extort money or any valuable thing from any person under colour of this Act, shall be deemed to have committed the offence of cheating, and shall be liable to such punishment as is provided for that offence by the Indian Penal Code.

Offences against this Act by whom punishable.

26. If any person shall be guilty of an offence against the provisions of this Act on any line of navigation subject to this Act, such offence shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such line of navigation, or adjoining either side of that part of the line of navigation in which such offence shall be committed; and such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if such offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits; and, in case any such Magistrate shall exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction. Provided always that nothing in this section shall authorize any Magistrate to try any case which would not have been cognizable by him if the offence had been committed within his local jurisdiction.

Proviso.

Mode of recovering fines.

27. All fines imposed under this Act may be recovered in the mode prescribed by the Code of Criminal Procedure.

Period of limitation as to actions in respect of proceedings under this Act.

28. All actions against any person for any thing done or intended to be done under the provisions of this Act shall be commenced within three months after the act complained of, and notice in writing of the action and of the cause thereof, and of the damages claimed, shall be given to the defendant one month at least before the commencement of such action. If tender of sufficient amends shall have been made before action brought, then the plaintiff shall recover such amount only and shall pay all the defendant's costs. If a sufficient sum of money shall have been tendered after action brought and before the final hearing, then the plaintiff shall recover such amount and his costs up to the time of tender, and shall pay all costs incurred by the defendant after such tender.

Tender of amends.

Disposal of fees, tolls, &c., collected under this Act.

29. All rents, license fees, tolls, and fines collected and levied under this Act shall be paid into the public treasury, and carried to the credit of a fund to be entitled the "Canal and Ferry Fund." Such fund, after payment of all salaries payable and expenses incurred and all claims for compensation payable under this Act, shall be applied to the construction, improvement, repair, maintenance, and extension of the channels and ferries to which the provisions of this Act may be applied. Provided always that the Government shall be under no obligation to expend in any particular district the whole or any part of the surplus fund realized in that district.

Indemnity for certain acts done heretofore in the collection of tolls, &c.

30. All persons employed by the Government of Madras are hereby indemnified for all acts done by them or any of them in the collection heretofore of any tolls on the navigable channels in the Madras Presidency.

Government may delegate powers.

31. Government may delegate, under such restrictions as may seem fit, any of the powers conferred on it by Sections 7, 13, 15, and 17 of this Act, to any officer specially authorized in that behalf.

Short Title.

32. This Act may be cited as "The Canals' and Ferry Act, 1870."

(By order.)

(Signed) JOHN D. MAYNE,
Asst. Secy. to Govt.,
Legislative Dept.

CIRCULAR ORDERS OF THE BOARD OF REVENUE.

No. VIII.

Irsalnamahs accompanying village remittances to be in duplicate.

STANDING No. 289-1.

Proceedings of the Board of Revenue, dated 21st May 1870, No. 3,504.

The practice now obtaining of returning to the Village Officers Irsalnamahs as soon as the remittances have been received and credited in the Taluk Chittah, has been found by experience not only to facilitate the commission of frauds by the Taluk Treasury Officers, but also to prevent their immediate detection.

2. The Board, therefore, direct, in modification of Rule 53 contained in the present Village Manual, that for the future village remittances

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shall be accompanied by an Irsalnamah in duplicate—one in the book form as already in force, the other on a loose sheet. The former will be returned signed as at present; the latter will be retained in the Taluk Cutcherry for the purposes of comparison and check.

3. A receipt book with counterfoil must be opened in every taluk, and for every payment made into the Treasury, other than a village remittance, a receipt must be passed to the bearer immediately the sum is credited in the Cash Chittah, corresponding entries being made in the counterfoil for the purposes of future check and comparison.

4. To secure uniformity in all districts a form of receipt with counterfoil is annexed. The requisite number of receipt forms should be struck off at the District Press, and made up into books and sent to each taluk on indents as they are required. Care should be taken that a sufficient supply of these books is always kept at the taluks.

5. As a general rule, no money shall be received into the Taluk Treasury unless accompanied by a chellan or voucher. That voucher should be carefully filed and numbered. The number of the voucher should correspond with that of the receipt, or, at all events, the number of the voucher should be invariably quoted in the receipt.

Form of Receipt.

Counterfoil	Receipt
No.	No.
	Received into the Taluk Treasury of—
1. Name of the Office or Officer.	1. From the (Office or Officer.)
2. Amount.	2. Amount.
3. Date on which credited in the Treasury.	3. Credited on
4. { By whom received. / As per Remittance List, No.	4. { Paid by / As per Remittance List, No.
(Signed) Shroff.	(Signed) Shroff.
(,,) Nagady Goomastah.	(,,) Nagady Goomastah.
(,,) Taluk Sheristadar or Tahsildar.	(,,) Taluk Sheristadar or Tahsildar.

(A true Extract.)

(Signed) J. GROSE,
Acting Secretary.

(True Copy.)

(Signed) J. T. MAYNE,
First Assistant.

No. IX.

Applicants for demarcated lands to pay cost of demarcation.

STANDING No. 150-2.

The following will be added to the "Rules for the disposal of Assessed Lands" attached to the Board's Standing Order No. 150:—

"Applicants for demarcated land will be required before taking possession to pay the expense which has been incurred in demarcating it, the amount being calculated on the average cost of demarcation in the taluk. If the land has been unoccupied since the date of demarcation, the entire expense of the demarcation so calculated will have to be paid by the applicant; and, in the case of land which has been occupied since the demarcation, the applicant will be required to pay any balance known to be due on that account by the previous occupant."

2. The above ruling will modify to some extent the provisions of the 9th Rule embodied in Standing Order No. 150.

(A true Extract.)
(Signed) J. GROSE,
Acting Secretary.

(True Copy.)
(Signed) J. T. MAYNE,
First Assistant.

No. X.

Durkhasts for quarry lands to be referred to Board.

STANDING No. 150-3.

Durkhasts for quarry land taken up for quarrying purposes should not be disposed of under ordinary rules but referred with full particulars and suggestions for the orders of the Board.

(A true Extract.)
(Signed) J. GROSE,
Acting Secretary.

(True Copy.)
(Signed) J. T. MAYNE,
First Assistant.

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THE

MADRAS REVENUE REGISTER.

No. 7.] MADRAS:—FRIDAY, JULY 15, 1870. [Vol. IV.

THE COLLECTOR OF A DISTRICT.
III.

In our last article on this subject, we endeavoured to represent the heavy burden, and the inexpediency of that burden, imposed on a Collector in requiring him to communicate with various officials in his district. Let us now endeavour to form some conception of his correspondence with his superiors. This, of course, is of a much more pressing character, and is also very extensive and very varied in its subject-matter, the bulk of which would, however, disappear if the Collector were transformed into a Commissioner as we have proposed; for the bulk of it consists in letters to and from the Board. Even the mere list of his correspondents would be enough to frighten most people. There is the all-powerful Chief Secretary; there is the politico-economical author of Madras Famines; and there are the wet and dry Secretaries (as we trust we may without offence designate the distinguished Engineers who now hold those offices) in the Public Works Department. There is the mild and courteous High Court, and the fierce remorseless Board with all its insatiable satellites; there are Accountants General and Deputy Accountants General, Commissioners of Currency and Commissioners of Examinations, Court of Wards, Registrars General, Superintendents of too many departments to admit even of mention here, with Conservators of Forests, and Inspectors, and Directors General *ad infinitum;* and all of them requiring immediate replies to all their somewhat varied communications; and all these replies to be written by the same ill-fated scribe of a Collector. For it must be observed that the system allows for nothing in the shape of a Secretary; and, indeed, the feeling is rather against the clandestine use of such makeshifts, as Providence might seem to have especially provided in the way of well-trained English clerks and literary wallahs.

So far, we have been engaged in considering what may be called the written consequences of his work. We come now to his ordinary relations towards the people themselves, or, in other words, to his real work in life; and to find out what this is, we have only to turn to that admirable volume from which all his inspiration comes, the Bible of Madras Collectors, the Standing Orders of the Board (by Dalyell). But our readers would be weary indeed were we to transcribe one-half of what is written in that book as the whole duty of a true Collector. We shall content ourselves, therefore, with the *Index;* and, if our readers feel disposed (as is not impossible) to protest against even *that,* let them only reflect what *his* feelings must be as he

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vainly struggles with the whole vast volume "interleaved and annotated up to date." For the whole of it must be mastered if he is ever to become the model Collector; and our readers should remember that the whole of it is written in that terse and *concentrated* language for which the Board (and its Secretaries) have always been distinguished.

In the first place, then, Collectors are "to report upon (*i. e.*, criticise) the draft "Acts published in the *Gazette*," and "to "co-operate with the Educational Depart-"ment." Their duties as Judicial officers acting under Regulation IV of 1831, (relating to claims to grants of land, &c., for services rendered to the State); under Regulation VI of the same year, (in suits for hereditary village offices, of which offices there are probably many thousands in each district); under Regulation IX of 1822, (in cases of malversation by Revenue officials, of whom again there are many thousands, and most of them rather given to malversation), and in sundry other miscellaneous proceedings, such as those held under the Boundary Act, the Act for the settlement of disputes about water, and, above all, the Rent Act, are next just alluded to, and they are directed in all such cases "to "record their decisions in English." Then, after some general cautions as to what they are *not* to do, the Index proceeds to direct them "to exercise careful control "over the Salt Department, and to visit the "pans periodically," (along a coast line generally of about one hundred miles). Then, after an incidental remark that Collectors will be held strictly (*i. e.*, personally) responsible for stamp defalcations, we are told that they are "to decide the value of stamps to be "affixed on unstamped or insufficiently "stamped deeds." Proceeding from stamps to General Revenues, they are warned that they "are *held responsible* for any culpable "negligence in disposing of (*i. e.*, collect-"ing) balances" (arrears of revenue), and are told that "certain (*i. e.*, important) "sales of land are to be conducted in their "presence." They are "to examine Taluk "Treasuries unexpectedly;" and then our Index flies off somewhat erratically to law-suits to which Government is a party; and we find that "public servants are responsi-"ble for sums adjudged against them in "such suits for acts founded on their "official reports." Then, in the matter of correspondence, they are "to examine the "lists of arrears at frequent and stated "intervals;" and it should have been added that they are "to open all vernacular cor-"respondence themselves and, of course, "have it read to them then and there." They are further to go on circuit as often as possible; are "personally responsible for "the correctness of the accounts;" and are "to receive petitions and complaints regu-"larly," and *always* be accessible to *every one*.

To sum up briefly, a Collector is to be the steward of an estate larger and more populous than any county in England, except perhaps two or three, being at the same time as Chief Magistrate responsible for the peace of it. So much for the entries in the Index under the head "Collector." We shall get a more enlarged and exhaustive view of his duties if we skim through the Index, and note in the briefest possible way the subjects with which he is expected to be familiar. There is, first, the Abkari, no small responsibility of itself; second, the accounts, elaborate and voluminous to a degree, which, being spread over nine or ten treasuries at an average distance of say thirty or forty miles from his head quarters, call for a good deal of activity, if the supervision is to be *personal* as the rules assume it to be. Third, comes the Cattle Trespass Act in force in some thousand villages, each with its pound and pound-keeper, and an elaborate system of accounts to be juggled in connection therewith.

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Fourth, Act VI of 1857, (now Act X of 1870,) which provides the procedure necessary when land is taken possession of for Government purposes. Fifth, the Stamp Act, the most abstruse, intricate, and incomprehensible, as well as the most changeable of all Acts, with rules innumerable, ostensibly for his guidance, but really resulting in his greater and more irretrievable bewilderment. Sixth, the Revenue Act, (II of 1864). Seventh, the Rent Act, most burdensome of all to a Collector whose district happens to have been cursed with a good deal of permanent settlement. And here, we will leave him for a time, as the novelists leave their heroes, in the most critical condition at the end of the monthly number. No one who has not had some experience of it knows, or can imagine, how the *Revenue* administration of many districts groans under the unnatural burden imposed upon it by this terrible Act, which, in fact, has raised all our Divisional Revenue Cutcherries into Civil Courts for the trial of *the* most intricate and perplexing questions of proprietary right. Indeed, we have no hesitation in saying that any Revenue officer in Madras, who has had but a few years' experience of this Act, would settle the Irish land question and administer the subsequent law with the greatest possible ease. The issues that would arise there would be simply *childish* in their truthfulness, compared with those he disposes of every day in this country.

A BRIEF HISTORY OF MYSORE.

We find on our table a modest little book, entitled "The History of Mysore," by P. Krishna Row of the Mysore Commission. The compiler distinctly informs us in his preface that he lays no claim to originality, the work being condensed by him from the large and expensive histories by Colonel Wilkes and others, as a cheap abridgment for the use of schools.

The narrative opens with the romantic legend of the origin of the Royal Family of Mysore, and closes with the events of about twenty years back during the lifetime of the late rajah. In the absence of the necessary records, it is not easy to fix the date of the beginning, and thus say at what period two young brothers of the Royal House of Vijayannuggur left their home and, wandering south towards Mysore, founded a new dynasty in that fertile territory. A number of independent chiefs appear at this time to have occupied the land, each one of whom believed himself to be a royal potentate, amenable only to the Viceroy of the distant Vijayannuggur. Chronology first comes to our aid in 1507, when a prince, surnamed the Six-fingered, ascended the throne. A number of princes reigned successively, many of whom appear to have been brave and warlike men. In 1687 we first meet with the name of Eccoji, that terrible warrior so well known in the annals of Southern India. He had obtained possession of Bangalore and offered it to Chick Deo Raj, the then reigning monarch of Mysore, for three lacs and thirty thousand rupees. It is amusing to note that, while they were haggling about the price, an officer of the Emperor Aurungzebe seized the subject of contention and sold it to the Rajah of Mysore, thus leaving Eccoji minus Bangalore and his money to boot. The fortunes of Mysore varied with the varying characters of its princes; but there is little worthy of notice till the rise of the famous Hyder Ali, who first distinguished himself at the siege of Devanahully in 1749, when in the service of the Prime Minister of Mysore. It appears that the great-grandfather of Hyder came from the Punjaub, and settled somewhere in the region about Hyderabad. Futtay Mahomed, Hyder's father, was, however, born at Seera, and, having

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commenced life as a common peon, experiencing many ups and downs of fortune, attained the rank of Naik under the Nawab of Seera, in whose service he died. At the time of his father's death, Hyder and his elder brother, Shabaz, were young children; but, notwithstanding the defenceless condition of these poor children and their widowed mother, the son of the Nawab, in whose service the father had lost his life, robbed the widow and orphans of all that they possessed. This injury Hyder, at least, never forgot or forgave. The elder brother, Shabaz, eventually obtained a small command in the army of Mysore, and Hyder served under him as a trooper. Hyder distinguished himself by his valour and rose to a small command; and he was from time to time promoted, till he obtained the superior position of Governor of Dindigul. He was as corrupt in his administration as he was brave in battle, and he soon amassed a large private fortune. Subsequently Hyder made an attack on Madura and Tinnevelly, which was successfully repulsed by Mahomed Issuf on behalf of the British. From this fruitless expedition Hyder returned to Seringapatam, where a different task awaited him. The management of affairs had long been in the hands of two brothers, Nunj Raj and Deo Raj, who monopolized all real authority in the kingdom, reducing the rajah to a mere puppet. Against this tyranny the rajah rebelled, and, during the disturbances that followed, the pay of the troops fell into arrears, and the whole revenue system lapsed into the greatest confusion. The rajah and his two powerful ministers were ultimately reconciled, but the finances could not be so easily restored to a satisfactory footing. At this juncture one of the brothers, Deo Raj, died, and Nunj Raj at last threw up his task in disgust, and saddled Hyder and his great friend and adviser, Khunday Row, with the re-arrangement of the finances. Hyder was quite equal to this emergency. With great skill he extricated the Government from its fiscal difficulties: he dismissed the superfluous troops, first seizing on their wealthiest leaders as mutineers, and confiscating their property for the purposes of the State. On this Hyder and his troops were entrusted with the custody of the fort and palace, and he further obtained the jaghire of Bangalore, besides honours and titles. In 1759 Hyder repelled a Mahratta invasion, and as usual turned it to his own profit: by tendering his personal security for sixteen lacs to the Mahrattas, they resigned to him personally, instead of to the Government, the lands which were to have been given up, but for which the Government was too impoverished to pay. Now comes the story of intrigue which led to Hyder's complete accession to power and rule. The queen dowager was anxious to get rid of Nunj Raj, who was still prime minister: she contrived to transfer the office from him to Khunday Row, Hyder's friend and retainer. The occasion on which this was effected was a mutiny among Hyder's troops, who were terribly in arrears of wages. Khunday Row became dewan, and Hyder received fresh assignments of territory to enable him to pay his troops, which now made his possessions more than half of the whole kingdom. He then joined the French in an endeavour to expel the British from Arcot, sending the bulk of his troops to aid the former. About this time the old dowager repented having abased Nunj Raj, and persuaded Khunday Row to aid her in her present desire to depose Hyder, who was encamped at that very time with an insignificant force under the guns of the fort. The attempt failed; for, though attacked by the Mahrattas, who were hired by the dowager, and exposed to the fire of the fort, Hyder contrived to escape to Bangalore, and, returning in a little time with

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troops, gave battle to Khunday Row. Strange to say, Hyder so worked on the feelings of Nunj Raj, that he was the very man from whom he received reinforcements and all possible assistance. Khunday Row was defeated and fled; and the rajah, under the advice of the various officials, gave up his raj to his imperious vassal, reserving to himself a jaghire of only three lacs of rupees. The unfortunate prince begged Hyder to extend his mercy to Khunday Row, to which request Hyder replied by promising to take care of him like a parrot. The rajah understood this to mean with care and kindness; but Hyder set his own interpretation on it, confining the unhappy traitor in an iron cage and feeding him with rice and milk!!!

Thus the orphan child and subsequent friendless adventurer secured to himself immense wealth and an ancient throne. Hyder's successes were many and brilliant; among his conquests must be specially mentioned that of Bednore, by which he was enriched to the extent of twelve millions sterling! Soon after his accession to the throne of Mysore, Hyder encountered the British, and waged war with them with varying success until peace was concluded, to obtain which each party relinquished all it had gained from the other. A subsequent war with the Peishwar sadly contracted the adventurer's dominions; but his star was still in the ascendant, and he soon gained more than his former possessions. He fought the English again in 1780, on which occasion Madras received her third visit of Hyder's famous flying horse. Hyder's glory had by this time fully culminated, and was now fast waning before the superior arms of the advancing British power. After some successes on Hyder's part, Sir Eyre Coote and Sir Edward Hughes turned the tide of victory. Hyder was decisively routed on the 1st July 1781, and about the same time his equally famous son Tippoo was repulsed at Wandewash by Captain Flint. The British were again successful at Sholinghur, but were routed by Tippoo in Tanjore. In 1782 Hyder breathed his last, being succeeded in the kingdom he had usurped by his son Tippoo, who carried on the legacy of warfare with the British which his father had left him. In 1791 Bangalore was taken by the British, and Lord Cornwallis pursued Tippoo to the very walls of Seringapatam. Various hill forts were taken or surrendered, and then Lord Cornwallis attacked Seringapatam and forced Tippoo to flee. In 1792, on the junction of the Madras and Bombay armies, Seringapatam was regularly invested; but the belligerents decided its fate by negotiation—Tippoo was to cede half his dominions, and pay three crores and thirty lacs of rupees; Tippoo's two sons were to be delivered up as hostages for their father's good faith. They were kindly treated by the wise and humane Cornwallis, and, after residing two years in Madras, were restored on their father completing the fulfilment of his promises. Tippoo might now have ended his days in peace, but he burned with the desire to expel the British from India. On the discovery of his design by the Governor-General, fresh hostilities commenced; and in 1799 General Harris passed the frontier. On the 4th May 1800 Seringapatam fell, and Tippoo—the terrible and great—was slain in the confusion. A portion of the heritage of Mysore was then bestowed on a descendant of its ancient Hindu rajah, while the remainder was divided among the British and their allies. Tippoo's two sons were removed to Vellore, and received liberal allowances. Old Poorniah, the celebrated treasurer, first of Hyder and afterwards of Tippoo, became dewan to the young rajah, and proved as faithful to him as he had been to the Mahomedan usurpers. Of course, all things could not at once

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become tranquil as if by magic; but after many difficulties and dangers, with Poorniah as Dewan, Colonel Close as Resident, and Wellesley as Military Commander, Mysore entered on the season of peace, happiness, and prosperity, which belongs to the history of our own days.

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

The Select Decrees of the Madras Sudr Udalut from 1805 to 1826 are now out of print. They contain much valuable information not easily within the reach of the practitioner. It has been suggested to us, and we gladly avail ourselves of the suggestion, to reproduce the more important of these decisions from time to time in our columns. We propose, therefore, to bring out in this branch of our Reporter selected judgments treating of, or bearing upon, revenue questions; while such as discuss questions of a purely legal character will find their proper place in the columns of the *Jurist*.

CORRESPONDENCE.

To the Editor of the Madras Revenue Register.

SIR,

Will you be so kind as to favour me with a solution of the following query through the medium of your well-known journal? If so, you will confer a boon on all persons that may labour with me under the difficulty of solving it.

The latter part of Section 33 of Madras Act VIII of 1865 runs as follows, "If the "arrear, with interest and costs of distress and "sale, be satisfied by the sale of a portion of "the property, the distress shall be imme-"diately withdrawn as respects the remainder. "When the property put up to auction may "sell for more than the amount of the arrear, "the overplus, after deducting expenses of "process, interest, and a sale commission of six "and one quarter per cent., shall be paid to "the defaulter."

Some of the Revenue authorities of long experience hold that no sale commission is to be deducted when the property put up to auction sells for less than the amount of the arrear, and are even acting under that impression. They maintain that there can be no reason for omitting the words "sale commission" where interest and other charges are specified in the former sentence, and for expressly mentioning the same in the following sentence, for the first, nay, the last time in the Act, and that, when speaking of an *overplus* alone; and that the legislature has taken special care to mention it in this particular place with a view to guard against the possibility of a different construction.

With due deference to the opinion of the above authorities, I beg to state that I cannot see the force of their reasoning when I consider the reasons that govern the opposite construction that is in favour of deducting sale commission when the property sells for less than the arrear. Those who favour this construction advocate that the legislature, having felt the necessity of meeting the cases of overplus, enacted that the same should be paid to the defaulter after deducting expenses of process, interest, and a sale commission of six and one quarter per cent., the deductions here named being simply a repetition of the charges mentioned in the former sentence. Here they have the authority of Mr. Norton (758) *Redendo singula singulis*, namely, referring particular expressions to their own antecedents. Thus the words "expenses of process" correspond with "costs of distress," "interest" with "interest," and "sale commission of six and one quarter per cent." with "costs of sale." The force of this reasoning depends, as you will observe, on construing the words "costs of sale" for a sale commission of six and one quarter per cent., for any other construction will involve a departure from the rule of equity with which we should legally presume the legislature always deals, *expressio unius est exclusio alterius*. For instance, if costs of sale in the former sentence be assumed to mean any other costs than a sale commission, such costs cannot be deducted in cases of overplus, since no other costs of sale than a sale commission is mentioned in the latter sentence, while the same may be deducted in cases where there is no overplus, as appears from the preceding sentence. This is absurd. Of course, the legislature could not have meant that the Government is to forego a source of revenue when there is no overplus and to levy the same when there is, for the services of a Government Officer are no less required in one case than in the other. In determining the spirit of an Act, "the consequences of any

particular exposition will be most properly considered and weighed for the purpose of avoiding absurdity."

I beg to remain, Sir,

Your most obedient servant,

INQUIRER.

CHETTERPUR, }
5th June 1870. }

The section is perhaps rather loosely worded; but it seems to be clear that costs of distress and sale, including commission, or covered by such commission, are to be recovered in either case.—ED. *R. R.*

HIGH COURT—MADRAS.

(Appellate Side.)

SCOTLAND, C. J., AND COLLETT, J.

Suit for exchange of puttah and muchilka—Enhancement—Construction of Clause 4, *Section* 11, *Act VIII of* 1865.

Where a Zemindar sued his ryots, under Act VIII of 1865, *to compel them to accept a puttah at enhanced rates of assessment, on the ground that he had, at his own expense, repaired a tank and rendered the land (formerly cultivated as punjah) capable of being cultivated as nunjah, it was found that the improvement had really been made by the Zemindar, and that an additional value had been thereby imparted to the lands—*

HELD *that the question whether the landlord had a right to raise the rent depended upon the right construction of the first branch of the proviso to Clause* 4, *Section* 11 *of the above Act; that, assuming that the improvement fell under such proviso, the right of plaintiff to raise the rent depended upon, first, whether he had obtained the previous sanction of the Collector, and secondly, whether the Government had levied additional revenue from him in consequence of such improvement; and that, as both these conditions failed in this case, the judgment of the lower Court in dismissing the plaintiff's suit was sound in both respects.*

S. A. 546 *of* 1868.

Saitu Rajah *v.* Iyaruppa Naiken and Sandama Naiken.

THE plaintiff brought two suits before the Acting Head Assistant Collector of Madura to compel the defendants to accept puttahs and exchange muchilkas. The defendants, inhabitants of Keelagoody, objected to accept the puttahs offered them, on the ground that they were incorrect. Some *stalls* which were punjah had been entered as nunjah, and a nunjah or half varum assessment was demanded. The plaintiff was the landholder by purchase of all the nunjah lands in Keelagoody. He asserted that the land entered in the puttah was nunjah, and formed part of the ayacut of the Keelagoody *Rammai.* The Head Assistant Collector, Mr. McWatters, seeing that the main point in issue was whether the land entered in the puttah were punjah or nunjah, went to Keelagoody and inspected it. He was clearly convinced that it was all nunjah land, and he found that it was so entered in the Huzur accounts. He admitted that, owing to the state of the tank for many years, defendants had often been allowed to cultivate punjah crops on their nunjah land. The plaintiff had, however, repaired the tank at considerable expense to himself, and was, therefore, Mr. McWatters thought, justified in demanding that the whole ayacut of the tank should be treated as nunjah. The Rent Recovery Act VIII of 1865 gave power to landlords to raise their assessments in proportion to the improvements made. In this case the plaintiff had supplied the means of again cultivating the land as nunjah after it had long deteriorated into punjah for want of water. Mr. McWatters was, therefore, of opinion that the terms of the puttah were proper and just, and that plaintiff could demand the nunjah assessment for the lands cultivated by defendants. From this decision the defendant appealed to the Civil Court of Madura. Mr. Sharpe, the Civil Judge, remarked—first, that Collectors were undoubtedly allowed some irregularities of procedure, but that when separate plaints were presented against separate tenants for separate lands, separate judgments should be passed even if they were only copies of each other; second, the Collector had allowed the rents to be raised because the plaintiff had repaired the tank at a considerable expense. This might be done under Section 2, Act VIII of 1865, but only in cases in which additional revenue had been demanded by Government from the landholder. No such extra revenue had been levied in this case, and the Acting Head Assistant Collector was not authorized to raise the rents. There was also no evidence that the tank had been repaired by plaintiff, nor that the value of the lands had risen in consequence. Mr. Sharpe, therefore, reversed Mr. McWatters' decision in so far as it directed defendants to accept a puttah and execute a muchilka at higher rates than that formerly paid by him. From this decree the plaintiff appealed to the High Court. Sunjiva Row for the appellant. Johnstone for the respondent.

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The High Court delivered the following

Judgment:—3rd May 1870.

In this case a Zemindar sued before the Collector, under Madras Act VIII of 1865, to compel his tenants, the defendants, to accept a puttah at enhanced rates of assessment on the ground that he had, at his own expense, repaired a tank and rendered the land formerly cultivated as punjah or dry land capable of being cultivated as nunjah or wet land. The finding upon the issues sent down by this Court shows that the improvement has been executed at the expense of the landholder, and that thereby additional value has been imparted to the lands. The question whether the landholder has now in consequence a right to raise the rent upon the lands, depends upon the right construction of the first branch of the proviso to Clause 4, Section 11 of Madras Act VIII of 1865. Assuming that the improvement in the present case is one of those contemplated by the proviso, and it seems to be a strong instance of such, the right of the plaintiff to raise the rent would seem to depend upon two conditions—first, that he has obtained the sanction of the Collector to raise the rent; and secondly, that an additional revenue is levied from him consequent upon the improvement made. As to the first condition there can, we think, be no doubt that it is a condition precedent to a suit to compel acceptance of a puttah at an enhanced rent. It was urged that practically the Collector has given his sanction by deciding in favour of the plaintiff. But the object of the suit is to compel acceptance of the puttah, and it is obvious that until the sanction of the Collector is first obtained the right to enforce acceptance of such a puttah does not exist, and the subsequent judgment of the Collector cannot impart the sanction which is antecedently requisite to the right to sue. We have no doubt that the legislature has interposed the Collector between the landholder and the ryots, in order on the one hand to guard against prejudice to the cultivator by fanciful or unprofitable projects of the landlord, to prevent the ryot from being (as the phrase is) improved out of his estate or holding, and, on the other hand, to secure the landholder from being deprived of a fair return for a really desirable improvement of which the ryot takes the benefit. A ryot with a permanent right of occupancy ought not to have forced upon him, at the mere will of the landholder, some speculative improvement which, though it may add somewhat to the market value of the land, may at the same time alter the character of the farm and render the ryot's holding, when burdened with the enhanced rent, a far less profitable investment of his capital and labour than it was in its former condition. On the other hand, the ryot might in some instances unjustly avail himself of his peculiar rights of occupancy to take the benefit without sharing with his landlord in the burden of a thoroughly desirable improvement. It seems to us that the very important and by no means easy task of arbitrating between the landholder and his ryots on such occasions, has been imposed by the legislature on the Collector in the first instance at least. It is clear that in the present case the landholder has not obtained the previous sanction of the Collector to the raising of the rent; and this objection is fatal to his present suit.

But it seems desirable that we should say something in regard to the second condition of the right to raise the rent, because it was on this ground alone that the lower Appellate Court dismissed the plaintiff's suit. It was contended for the plaintiff, that it is only when the improvement has been made at the expense of Government, that the right to raise the rent depends upon the condition that an additional revenue is levied from the landholder. The use of the word "and" in the sentence "and for which, &c.," was relied upon in support of this contention. The sentence appears to be very loosely framed; and in almost any construction of it, the word "and" seems to be superfluous and inaccurate. The additional revenue when levied is not *for* the works or improvements executed, but *for* or on account of the additional value thereby imparted to the lands; and, if the words "for which" relate to the "additional value," then clearly the condition that an additional revenue is levied holds whether the works were executed at the expense of the landholder or of the Government. But if the words "for which" were intended, with some laxity of language, to relate to "works of irrigation or other improvements," then there is no ground on which they must be limited in their relation to either the one or the other only of the two kinds described: the form of the sentence permits their being equally applied to both. It was said that the Government could only be supposed to intend to exact an additional revenue when the additional value had been imparted at their sole expense. This may be so, but certainly such intention has not been clearly expressed, and we ought not to hold, except on very clear words, that the Government have deprived themselves of the right to a fair share in the increased produce of the land, though not directly brought about by State expenditure. Though it is not indispensable for us to decide the point, we think it right to express our opinion that the ground on which the lower Appellate Court dismissed the plaintiff's suit is a sound one. The decree below must be affirmed, and this special appeal dismissed with costs.

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SCOTLAND, C. J., AND COLLETT, J.

Landlord and tenant—Puttahs—Poligars—Definition of landholder—Act VIII of 1865.

Where a Poligar sued to compel his tenants to accept puttahs, the Civil Judge, reversing the order of the Sub-Collector, dismissed the suit on the ground that the holder of an unsettled polliem had only a life-estate and could not come within Section 1 *of Act VIII of* 1865, *and that he could only come in under Section* 13 *as paying direct revenue to Government.*

HELD *that Act VIII of* 1865 *contemplates two classes of landholders, of whom the first consists of Zemindars and others to whom the old Puttah Regulation XXX of* 1802 *formerly applied, who receive revenue from their tenants and pay a fixed yearly sum to Government called Peshcush; that the second class comprises those who hold land under the Ryotwar system and pay Government the full revenue assessed on their lands; and that Poligars, like Muttahdars who are not named, come within Class* 1 *under the words* other Zemindars, *as they stand, during the continuance of their life-estate, in the same relation to Government on one side, and their tenants on the other, as Zemindars of hereditary estates.*

S. A. 254 *of* 1869.

Chowki Gounden *v.* Venkataramier and another.

THE plaintiff, the Poligar of Shulagherry, sued the defendants before the Sub-Collector of Salem for an order directing them to accept a puttah for the lands specified in the plaint. The Acting Sub-Collector, Mr. Price, found that the lands referred to in the plaint were in the possession of defendants, and that they had been called upon by the plaintiff to receive a puttah for the same. Defendants admitted that the assessment of the padukal lands was correct, but they urged that 20,000 gulies of poremboke land was in a great measure unfit for cultivation; that the assessment on it was not just; that they did not know whether the extent of the ground was really 20,000 gulies, (for in the ayacut accounts it was entered as 1,000 gulies); and further, that a former poligar rented the whole village, and granted a puttah for it, to one Papi Gounden for Rupees 25 *per annum*, so that the defendants, who had acquired his rights, were entitled to hold the land on the same terms. As to whether the defendants were bound to accept a puttah or not, the Sub-Collector found that, as the land was in their possession and they were unwilling to give it up, they were certainly bound to accept the puttah. They had in no way troubled themselves to ascertain the extent of the land: the second defendant admitted that he had received a notice from the plaintiff to attend and see it measured, but he did not think fit to go. The ayacut accounts referred to by defendants could not be found in the taluk nor in the Collector's cutcherry, but from a certified copy of the pymash accounts it was shown that the land was then entered as 20,000 gulies. The plaintiff had measured the land and found it to be 39,671 gulies of land. The Sub-Collector arrived at the opinion that, as waste lands were almost invariably found to be inadequately estimated in the pymash accounts, and as the indifference of the defendants in not being present at the recent measurement was so extraordinary, the real extent of the poremboke lands was probably as stated by plaintiff. He held that the plaintiff was in that case entitled to demand that defendants should accept a puttah for the excess thus discovered. The rent claimed by plaintiff was shown to be the average of all classes of assessed lands in the village. The plaintiff had the power, under Clause 4, Section 2 of Act VIII of 1865, to arrange his own terms about rent of waste lands, and there could be no fairer way of settling the assessment of so large a piece of land than taking the average of all the assessed lands in the village. As to the grant by the former poligar of the village for Rupees 25 per annum, the Sub-Collector was of opinion it could not bind the present poligar. First, the Shulagherry polliem being an unsettled estate and not devolving from father to son, but each holder taking his estate in it as a tenant-at-will of Government, no rental at lower rates than those assessed on similar neighbouring lands could bind either the Government or the successor of the poligar who rented out the lands. Secondly, even if this agreement had been a cowle as defendants wished to hold it, still from the wording of it it had not been given *bonâ fide* for the purpose of re-claiming and permanently improving the waste lands, and, therefore, was not binding on the successor of the grantor. For all these reasons the Sub-Collector held that defendants were bound to receive a puttah from plaintiff for the lands specified in the plaint, and also for the excess which had been brought to light by the measurement of the Kassu Kavali Poremboke lands. The Civil Judge of Salem, Mr. Chamier, reversed this decision on appeal, on the ground that the plaintiff had no proprietary right in the land. He could not, therefore, exchange puttahs and muchilkas. A poligar to whom an absolute

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title had been conveyed by Government would be a Zemindar within the meaning of Sections 1 and 3, Act VIII of 1865; but the holder of an unsettled polliem was only a life-tenant, and had no proprietary right in the estate. Mr. Chamier, therefore, thought that the plaintiff could only avail himself of the Act by coming in under Section 13 as a landholder paying revenue direct to Government. He, therefore, reversed the decision of the Sub-Collector, and dismissed plaintiff's claim with costs. From this decree plaintiff appealed to the High Court. Rama Row for appellant, Strinavassa Chariar for respondent.

The High Court delivered the following

Judgment:—23rd February 1870.

This was a suit brought before a Collector to enforce the acceptance of a puttah under Madras Act VIII of 1865. In Section 1 of that Act the definition of "landholders" apparently divides them into two classes, having different rights under the Act. The first class can compel the interchange of puttahs and muchilkas as provided by the Act, but the second class have only the rights given to them by Section 13. The plaintiff in the present case is the poligar of an unsettled polliem, and the Collector compelled the defendants as tenants to accept a puttah from him. The Civil Judge held that the plaintiff fell within the second class of "landholders" and was consequently not entitled to sue to compel the acceptance of a puttah, and his suit was dismissed accordingly. The terms of the definition in Section 1 are certainly far from explicit; but apparently it was intended to include in Class 1 of "landholders" all landholders to whom the old Puttah Regulation XXX of 1802 was applicable. There can be no doubt that that Regulation was intended to include, and in practice was always acted upon as including, poligars; and we think that poligars like muttahdars, who are also not named, were intended to be comprised in Class 1 of the definition under the words "*other* Zemindars," that is, other than those who hold by an istimrar sunnud. The poligar of an unsettled polliem may, according to the generally received theory as to his rights, have only an estate for life in his polliem; but for such an estate as he has, his relation to the Government on the one side, and to the occupiers of lands within his polliem on the other side, resembles that of a Zemindar. He receives from the ryots who have certain customary rights of occupancy his share of the income or produce derived from their lands, and pays to the Government a certain fixed sum short of this amount under the denomination of peshcush. It seems to have been intended to include in Class 1 besides those who pay a mere quit-rent to Government, (which is so far an extension of the old Puttah Regulation,) and the farmers of the land revenue from Government, properly so-called, and farmers of lands under Zemindars, all who, like Zemindars, occupy in some degree the position of middlemen between the occupants of the land and the Government, and pay to the Government a fixed sum called peshcush, being something short of the total revenue calculated as receivable from the lands comprised within their estates; and to include in Class 2 those who, whether under the ryotwar settlment or otherwise, pay direct to Government what is really the full land revenue assessed on their holdings. In this view, as to the correct construction of the definition, the plaintiff in the present suit was entitled to bring it, and the appeal must now be remanded to the lower Appellate Court in order that it may be disposed of upon the merits. The plaintiff is entitled to his costs of this special appeal, and the other costs will abide the result of the suit.

HIGH COURT—CALCUTTA.

Peacock, Sir B., *Kt.*, C. J., and Loch, Kemp, Macpherson, and Mitter, J. J.

Akhoy Sankar Chuckerbutty (defendant) *v.* Raja Indra Bhusan Deb Roy (plaintiff.)*

Suit for a kabuliat—Enhancement of rent—Act X of 1859, *Sections* 4 *and* 13.

In order to entitle a landlord to sue for a kabuliat, he must tender a patta.

A suit for enhancement of rent cannot be supported without there has been a previous service of notice under Act X of 1859, *Section* 13.

This suit was brought in the Court of the Deputy Collector of the district of Jessore.

It was stated in the plaint that in the village of Magoorah, within the plaintiff's zemindari, an unsettled holding at a rent of Rupees 26 was recorded as being in the defendant's occupancy; but that the defendant was in occupation of 48 bigas 19 katas of land under cover of the above holding, and consequently held a considerable quantity of land at an inadequate rent. Plaintiff instituted this suit to obtain a kabuliat from the defendant at a rent of Rupees 79-4-0, alleging that the amount was calculated at the prevailing rate of rent paid for adjacent lands of a similar description throughout the pergunnah. No notice was served as required by Section 13, Act X of 1859, before the institution of the suit, nor did the plaint state from what date the kabuliat asked for should commence; but no objection appeared to have been raised on these points before the Deputy Collector. The defendant urged that, within the

* Special Appeal, No. 1,522, of 1868, from a decree of the Officiating Additional Judge of Jessore, dated the 30th March 1868, reversing a decree of the Deputy Collector of that district, dated the 31st December 1866.

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village mentioned by the plaintiff, he had a permanent mirassi holding at a rent of Rupees 26; that he had paid the rent thereof at a uniform rate for a period of more than twenty years; that it was, therefore, not capable of enhancement; that the amount of land so held by him was only 41 bigas 2 katas; and that the rate of rent paid for adjacent lands was 1 rupee per biga for homestead, and 8 annas per biga for *mattan* or meadow lands.

The Deputy Collector fixed the issues, and in his decision, dated 31st December 1866, found that the defendant's holding was recorded in the name of one Brajakishor Roy, who had died twenty-five or twenty-six years previously, at an age variously stated at from 70 to 72 years; that it was, therefore, "not improbable that Brajakishor "Roy had become of age before the time of the "decennial settlement, and acquired the holding "in question at that time;" that certain dakhilas produced by the defendant for the years 1265, 1266, 1267, (A. D. 1852, 1853, 1854,) were authentic and genuine; and generally on the evidence that the defendant had paid rent for his holding for twenty years at a uniform rate of Rupees 26, and that he was, therefore, entitled to the benefit of Section 4 of Act X of 1859. He dismissed plaintiff's suit.

The Officiating Judge of Jessore reversed this decision on the ground that the defendant had not proved that he had paid rent at a uniform rate for twenty years.

The defendant then appealed to the High Court on the following grounds:—

First.—That the suit for a kabuliat will not lie, as there was no previous tender of a patta as required by Section 9, Act X of 1859.

Second.—That plaintiff has failed to mention in his plaint the period for which he demands the kabuliat.

Third.—That no notice was served as required by Section 13, Act X of 1859.

Fourth.—That the lower Court was wrong in holding that a uniform payment of rent for twenty years was necessary under Act X of 1859, for the law only requires the tenant to prove that the rate of rent has not been changed for the last twenty years, which had been proved; and

Fifth, generally on the merits.

In support of these grounds the following cases were cited:—*Gobind Lall Seal* v. *Kinoo Koyal*,* *Umbica Churn Pottro* v. *Boidanauth Pottro*,† *Pertab Chunder Banerjee* v. *Philippee*,‡ *Troyluckhonath Chowdry* v. *Kuleema Bibee*,§ *Golam Mahomed* v. *Asmutt Alee Khan Chowdhry*,‖ *Gobind Chunder Addy* v. *Musst. Auloo Beebee*,¶ *Thakooranee Dossee* v. *Bisheshur Mookerjee*,** *Anundloll Chowdry* v. *James Hills*,†† *Doorga Persad Dass Chowdry* v. *Kalee Kinkur Roy*,‡‡ *Munsoor Ali* v. *Bunoo Singh*,§§ *Modhoo Soodun Chowdry* v. *Ram Mohun Ghur*,‖‖ and a decision of the Sudr Court at Agra, dated March 31st, 1863, cited in Irvine's Rent Digest, 149.

* Marsh, 400.
† 1 W. R., 81.
‡ 2 W. R., Act X Rul, 56.
§ Ibid, 96.
‖ Case No. 1,175 of 1867, March 19th, 1868.
¶ 1 W. R., 49.
** Case No. 2,064, June 19th, 1865.
†† 4 W. R., Act X Rul., 33.
‡‡ 5 Ibid, 88.
§§ 7 W. R., 282.
‖‖ 8 W. R., 473.

The Court (Loch and Mitter, J. J.) held that the second point taken in appeal was disposed of by the Full Bench ruling in *Golam Mahomed* v. *Asmutt Alee Khan Chowdhry**. As to the fourth and fifth grounds of appeal, the learned Judges said:—"We think on the fourth objection that the "Judge is wrong. The law does not, as supposed "by the Judge, require the ryot to prove uniform "*payment* of rent for twenty years, but (see Section "4, Act X of 1859) to prove that the rent at which "the land is held has not been changed for a period "of twenty years." With regard to the fifth "ground taken in special appeal, we think the "grounds assigned by the Judge for rejecting the "dakhilas to be quite insufficient, particularly "when they had been attested by the person who "gave them, to whose evidence the Judge took no "exception. We forbear to pass any final order "in this case till the result of the reference to the "Full Bench is known."

But as to the first and third grounds of appeal, the learned Judges, considering that the decisions quoted were conflicting, referred the following questions for the opinion of a Full Bench:—

1. Whether the tender of a patta is necessary before the landlord can bring a suit for a kabuliat, &c.

2. Whether a suit for a kabuliat at enhanced rates, without previous service of notice, can lie.

Baboos *Girija Sankar Mazumdar* and *Bungsi Dhur Sen* for appellant.

Baboos *Mati Lal Mookerjee* and *Iswar Chandra Chuckerbutty* for respondent.

The judgment of the Full Bench was delivered by

Peacock, C. J.—I see no reason to change the opinion which I expressed in the Full Bench decision in *Thakooranee Dossee* v. *Bisheshur Mookerjee*,* that a landholder cannot sue for a kabuliat at an enhanced rate of rent, without giving the notice required by Section 13 of Act X of 1859. At the time of the Full Bench decision in *Golam Mahomed* v. *Asmutt Alee Khan Chowdhry*,† I certainly thought that I was in a minority in the Full Bench decision in *Thakooranee Dossee* v. *Bisheshur Mookerjee*,* the first Full Bench decision to which I have referred. I have no doubt I was misled by the marginal note‡ in that case in which it was said that "a suit for a kabuliat may be "brought without notice of enhancement, (Peacock, "C. J., and Norman, J., dissenting); but, in such a "suit brought without notice, the kabuliat cannot "be decreed, except to commence with the year "following that in which the decree is given." According to my recollection at the time, I thought that that marginal note was correct; but it appears now that there was not a majority of the Judges of the Full Bench in favour of that position; many of the Judges did not express any opinion on that point, and it did not arise in the case. In the Full Bench decision in *Ram Kanth Chowdhry* v. *Bhoobun Mohun Biswas*,§ it was not held that a suit for a kabuliat at an enhanced rent would lie without notice, but merely that a suit

* Case No. 2,064 of 1864, June 19th, 1865.
† Case No. 1,175 of 1867, March 19th, 1868.
‡ 3 W. R., Act X Rul., 29.
§ Case No. 2,216 of 1862, July 7th, 1864.

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for a kabuliat would lie without notice under Section 13, Act X of 1859. I cannot add much to what I said in the first Full Bench case to which I have referred; but it is clear, as shown by Mr. Justice Norman, that, if the commencement of the action for a kabuliat at an enhanced rate of rent is tantamount to a notice under Section 13, the commencement of the action creates a cause of action which did not exist at the time when the suit was commenced, whereas a cause of action must accrue before a suit can be commenced upon it.

Again, if a notice of enhancement be given under Section 13, six months before the mouth of Cheit, that notice can merely lie to enhance the rents of the ensuing year. If such notice were given, no suit could be commenced before the ensuing year for enhanced rates for that year, and the ryot under Section 19, knowing that his landlord intended to enhance his rent, might, in or before the month of Cheit after the notice, relinquish the land in respect of which the rent was sought to be enhanced. But if the suit to enhance is tantamount to a notice, it must be commenced in or before the mouth of Cheit, in order to enhance the rent of the succeeding year; and, if commenced six months before the end of Cheit, all the expenses of the suit might be incurred before the end of Cheit, and the whole expenses of the suit and the vexation attending upon it would be unnecessarily incurred if the tenant in the month of Cheit should give notice of his intention to relinquish the land.

I think it was urged in the course of the argument that, if the suit was brought before the month of Cheit, the tenant would not be allowed to relinquish. But, if that contention is correct, it shows that the commencement of the suit would deprive the ryot of the right to avail himself of the provisions of Section 19 of the Act. It appears to me to be quite clear that a suit to enhance is not tantamount to a notice given before the commencement of the suit.

As to the other point, it appears to me that a suit cannot be brought to compel the tenant to execute a kabuliat unless the landlord has tendered a patta to him, such as he was entitled to receive. Whether after the expiration of the notice to enhance a suit could be commenced to declare what were the fair and reasonable rents, and that the tenant would be bound to execute a kabuliat at those rents upon the landlords executing or tendering him a patta, is a matter on which it is not necessary for me to express any opinion. It was stated in argument that there is a case to that effect decided in the Agra Court. We have not seen the report itself, but merely an abstract of it cited from a text-book.*

The first question must be answered in the affirmative, that, in order to entitle a landlord to sue for a kabuliat, he must tender a patta; and, as to the second question, we hold that a suit for a kabuliat at an enhanced rate of rent cannot be supported without a previous notice under Section 13, Act X of 1859.

The decision of the lower Appellate Court will be reversed with the costs of this appeal and the costs in the lower Appellate Court.—*7th September 1869.—Bengal Law Reports, Vol. IV, Part XIX.*

* March 31st, 1863, cited in Irvine's Rent Digest, 149.

PHEAR AND MITTER, J. J.

Gabind Kumar Chowdhry (plaintiff) *v.* Haro Chandra Nag and another (defendants.)*

Enhancement, notice of—Uncertainty in notice.

Notice of enhancement should distinctly set forth the grounds upon which enhancement of rent is sought.

Notice of enhancement to the effect "that, as the rate of rent of the land" (in the occupation of the tenant) "is below the rate prevailing in the pergunnah and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the patta lands have been cultivated, I am entitled to receive from you Rupees 794-5-7-11¼ per annum," was held to be indefinite and uncertain; and, therefore, no suit thereon could lie for enhancement of rent.

THIS was a suit for enhancement of rent after service of notice.

The following is a (literal) translation of an abstract of the notice served on the defendants:—

No settlement having been come to regarding the *nirik* (rate of rent) of the land of the dihis and chaks in the mauzas and kismats of the said taluk mentioned in the schedule, hereunder written, which are in your possession, and the rate of rent of the lands of the said taluks having become equal to the pergunnah rate and the rate of the adjoining lands, that is to say, the capability of production of the said land having increased more than before and the value of the produce having increased, and waste lands having become cultivated of the said 5 annas, 6 gandas, 2 kauris, and 2 krants share, I am *malik* of half, that is, 2 annas, 13 gandas, 1 kauri, and 1 krant share. I am entitled to receive a sum of Rupees 798-5-7-0-11¼ krant according to the rate mentioned in the schedule.

The defendants set up *(inter alia)* that the notice had not not been drawn up according to law.

The Munsiff held that under Section 17, Act X of 1859, the notice did not clearly state to what class of ryots the defendants belonged; the notice was insufficient. He accordingly dismissed the suit.

On appeal the Judge held that "a notice stating that the rents were not fixed, and that the defendant did not pay according to the rates for the same kind of lands in the neighbourhood, &c., was not a sufficient notice under Section 51, Regulation VIII of 1793; that the defendant was not a ryot, and the notice could not be in the terms of Section 17, Act X of 1859."

The plaintiff appealed to the High Court.

Mr. *Paul* (Baboo *Ramesh Chandra Mitter* with him) for the appellant.

Baboos *Hem Chandra Banerjee* and *Kishen Dayal Roy* for the respondents.

* Special Appeal, No. 2,549, of 1869, from a decree of the Judge of Mymensing, dated the 20th August 1869, affirming a decree of the Deputy Collector of that district, dated the 7th April 1869.

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PHEAR, J.—I think that, unless we are prepared to differ from the judgment of a Division Bench of this Court given in *Kali Chandra Chowdhry* v. *Ratan Gopal Bhaduri*,* we must hold that the Judge below was right in his decision.

In this notice the appellant, after first setting out his own zemindari title, says:—"That you are "in possession of the mauzas, kismats, dihis, and "chaks, &c., appertaining to the said taluk as per "schedule given below, without effecting any set-"tlement as to the jumma and executing any "kabuliat in respect of the same; that, as the rate "of rent of the said land is below the rate prevail-"ing in the pergunnah and in adjacent places, and "as the productive powers of the land and the "value of the produce have increased, and as the "*patta* land has been cultivated, I am entitled to "receive from you Rupees 794-5-7-11¼ per annum, "according to the rate specified in the schedule."

It appears to me that this notice is quite as bad for indefiniteness and uncertainty as the notice which was held to be insufficient in *Kali Chandra Chowdhry* v. *Ratan Gopal Bhaduri*.*

It has been argued before us that this notice specifies three grounds of enhancement. If it does so, I think this is done in so uncertain a manner as to leave it impossible to say whether these three grounds have reference to the rates of rents of talookdars, or to the rates of rents of ryots.

The first, namely, that the rate paid for the said land is below the rate prevailing in the pergunnah and in the adjacent places, points in my mind rather to ryoti rates than to talookdari rates; and certainly the inference which one would first draw from the reference to the productive power of the land, to the increase in the value of the produce of the land, and to the increase of culturable land, without further words of explanation, is that the plaintiff had regard to rents payable by ryots rather than to rents payable by talookdars. It is a very long step indeed from increase in the productive power of the land to increase in the rents and profits derived, or capable of being derived, by the talookdar from his talook.

I am inclined to think with Mr. Paul that if a distinct ground of enhancement had been mentioned in the notice, unless it also appeared on the face of the notice that by law that ground could not be maintained, the Court ought not to dismiss the case without going into the merits. It is, I think, the plaintiff's look out to see that he can establish, on the ground which he specifies, a right to receive enhanced rents. We know nothing in this case relative to the evidence which it may be in the power of the plaintiff to give in support of his claim, but I think that the tenant is entitled, on the authority of the case which I have cited and of the other cases therein referred to, to a distinct and specific statement in the notice of enhancement, such as is beyond the reasonable possibility of mistake, of the ground of enhancement on which his landlord relies. I have already said that in my opinion the notice before us does not contain such a distinct statement, and, therefore, it seems to me that the special appeal should be dismissed with costs.

MITTER, J.—I concur in the judgment just delivered by Mr. Justice Phear. I do not think that the rent of a tenure like the present can be enhanced except under positive law or under some custom having the force of law, or by virtue of some agreement between the landlord and tenant. In the present case the notice does not specify any ground of enhancement sanctioned by any positive enactment, or by any custom having the force of law, or by any agreement by which the defendant has made himself liable to pay the enhanced rent which the plaintiff seeks to recover.

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* *The* 1*st April* 1869.

BAYLEY AND HOBHOUSE, J. J.

Kali Chandra Chowdhry, Zemindar, (plaintiff), *v.* Ratan Gopal Bhaduri and others, (defendants.)*

Mr. *Paul* (with him Baboo *Umerendranath Chatterjee*) for appellant.

Baboos *Srinath Das* and *Rames Chandra Mitter* for respondents.

HOBHOUSE, J.— * * * * * It is then contended that the notice under Section 13 of the Act was a proper notice under that section, and was understood by the parties to be a notice under the provisions of Clause 1, Section 17 of the Act. But we do not think that this can properly be said. The notice did undoubtedly specify the rent which was to be demanded for the coming year, and did also specify a ground of enhancement, *viz.*, the ground that the plaintiff was entitled to an enhancement at the *pergunnah* rates by virtue of the decision of 1855. But that is not of itself a notice within the meaning of Clause 1, Section 17 of the Act. That section requires, if the notice is to be governed by it, that the notice should state that the "rate of rent paid by such ryot is below the prevailing "rate payable by the same class of ryots for land of a "similar description, and with similar advantages in "the places adjacent," or words to that effect, and it does not, it seems to us, follow that, because the rates are *pergunnah* rates, therefore they must be necessarily understood to be rates "below" those prevailing in the adjacent places, and paid by ryots of the same description as the defendants. Neither can we say that the defendants knew that they were pleading to the provisions of Section 17, because they were not allowed an opportunity of adducing witnesses, and we do not, therefore, know exactly what it was that they pleaded to; and, on the other hand, the evidence adduced by the plaintiff was not evidence as to the prevailing rates within the meaning of Section 17, but only as to pergunnah rates which, in our judgment, are not necessarily the prevailing rates, and we agree with the judgment in *Radha Churn Chowdhry* v. *Chunder Monee Shikdar*,* to the effect that the grounds of the notice must be specific so as to show exactly what the grounds are on which the plaintiff seeks enhancement.

In this view of the case we think we cannot say that the Judge was wrong in law when he held that the notice was not a legal notice; and we, therefore, dismiss this special appeal with costs.

We may add that the decision of *Gobind Chunder Dutt* v. *Huronauth Roy*† and that of *Mackintosh* v. *Adur Monee Dossee*‡ seem to bear us out in the view we take of the first part of the case.

* 9 W. R., 290.
† 5 W. R., Act X Rul., 10.
‡ 6 W. R., Act X Rul., 87.

* Special Appeals, Nos. 2,084 and 3,223, of 1868, from the decrees of the Judge of Mymensing, dated the 4th May 1868, reversing the decrees of the Assistant Collector of that district, dated the 15th November 1867.

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Under these circumstances I am clearly of opinion that the notice in this case does not specify any ground of enhancement on which the plaintiff, special appellant, could have enhanced the rents of the tenure in question, and that the present case is precisely similar to that referred to by Mr. Justice Phear. I am of opinion, therefore, that this appeal ought to be dismissed with costs. —*3rd February* 1870.—*Bengal Law Reports, Vol. IV., Part XXII.*

HIGH COURT—N. W. PROVINCES.

PEARSON AND TURNER, J. J.

Alluvial land—Title—Special custom—Equity and justice—

HELD *that where the special rules laid down in Regulation XI of* 1825 *for the adjudication of questions of title to alluvial land are inapplicable and no special custom exists, the decision of the case ought to proceed on general principles of equity and justice.*

Sheogoolam Teewaree, (appellant), *v.* Faqeera Misser and others, (respondents.)

THIS was a special appeal from the decision of Rai Dabee Dyal, Subordinate Judge of Bustee, dated the 5th June 1868, reversing the decree of Mahomed Kamil Khan, Officiating Sudr Ameen of Bustee, dated 18th January 1868.

Baboo *Pearey Mohun Banoorjee* for appellant, the defendant.

Moulvie *Mehndee Hussun*, Lala *Lalita Pershad*, and Lala *Jowala Pershad* for respondents, the plaintiffs.

The present course of the river forms the base of a triangle, of which the sides are represented by the former course of the stream. Near the apex of the triangle—the boundaries of the plaintiffs' and defendant's villages—which are conterminous, and run down to the old course of the stream. The land now in suit is that which is enclosed within the triangle formed by the old and present course of the river. It does not clearly appear whether this land is a reformation by gradual accretion on the site of land, which formerly belonged to the village on the side of the river opposite to the villages of the plaintiffs and defendant, or whether it is, in fact, a slice cut off from the opposite village by a sudden change in the stream. The plaintiffs already hold the deserted bed of the stream which adjoins their village, and the defendant in like manner holds the deserted bed, which adjoins his village. Looking towards the present course of the stream, the land in dispute is in front of the plaintiffs' rather than of the defendant's village; but it equally adjoins the parts of the deserted channel, which are admittedly held by the plaintiffs and defendant respectively. Under these circumstances we hold that the first clause of Section 4, Regulation XI of 1825, does not apply.

Assuming either of the parties to be entitled to the land in suit as land formed by gradual accretion, then it adjoins almost equally the villages of both, and, therefore, the clause above quoted is inapplicable.

We consider the case is not specially provided for by the special rules laid down in the Regulation, and, this being so under the fifth clause of Section 9, in the absence of local custom Courts must proceed on general principles of equity and justice. The decision of the Revenue authorities and of the Court of first instance, by which the plaintiffs and defendant were held to be entitled to the land in equal moieties, appears to us to be more consonant with those principles than the decision of the Principal Sudr Ameen, which awarded the whole of the land to the plaintiffs.

Reversing the decision of the lower Appellate Court, we confirm that of the Court of first instance, and decree that the plaintiffs' suit be dismissed with costs and interest at six per cent.—*5th December* 1868.—*Reports of the High Court, N. W. Provinces, Vol. V.*

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

CASAMAJOR, C. J., AND SCOTT AND HURDIS, J. J.

No. 9 *of* 1807.

Mirassi right—Title founded on a sunnud not produced—

Where a Padre sued claiming the mirassi of certain land on the strength of a sunnud which he did not produce, and where it was found that the resident mirassidars had exchanged puttahs and muchilkas with the Collector—

HELD *that the non-production of so essential a document as the sunnud was fatal to the Padre's claim; that it appeared from the evidence in the case that the land had not been granted to him personally, but to certain Christians called* "new settlers;" *and that his plea that he now sued on behalf of the new settlers would not do, as the Court was guided by what was actually stated in his petition, but not by what he meant to be understood by it.*

PADRE GEORGE MANENTE instituted this suit against the defendants, laying claim to the

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mirassi of certain land in the village of Mapadoo as having been granted to him on the 1st December 1786 by a sunnud from Government, stated to be in his possession, and enjoyed by him until the 13th July 1796, when he alleged the defendants procured possession by means of a false representation to Mr. Collector Place.

The defendants admitted no part of the plaint. They denied the land ever having been cultivated or enjoyed by the plaintiff. They observed that under any circumstances the claim was improperly brought against them, the three defendants alone, they being only in part owners of the lands sued for. They affirmed that neither the plaintiff nor his Christians were the Mirassidars of the village. They came, they said, to Mapadoo in the year 1787, and measured out some ground for themselves. The plaintiff then rented the whole village for four years, and the Christians carried on the cultivation. At the expiration of the lease the Christians still continued to cultivate forty cawnies, leaving the rest of the land waste. Mr. Collector Place afterwards let out the lands to the inhabitants of the village, and in the year 1797 the tanks having been repaired at the expense of the Government, and the Christians having, when called upon, declared themselves incapable of carrying on the cultivation, Mr. Place took *muchilkas* from the inhabitants, who engaged to cultivate the whole of the *nunjah* land, the Christians at the same time undertaking to cultivate the *punjah* land, in which, however, they failed.

Copy of a letter from the Secretary of the Board of Revenue to the Superintendent of the jaghire was put in on the part of the plaintiff, stating that on Mr. Haliburton's report upon the ground applied for by Padre Manente for the new settlers, it had been resolved to make a distribution of the lands in certain villages, between the old Meeralu inhabitants and the new settlers; and on the part of the defendants, there was filed copy of a sunnud from Mr. Collector Place to the Amildar of Tripassore in confirmation of that part of their defence, wherein it was stated that the tanks of Coovum and Mapadoo had been repaired at considerable expense; that the new settlers had declared their inability to cultivate the *nunjah* lands; and that the original Mirassidars had executed the necessary *muchilkas*.

The Zillah Judge, on the ground of the sunnud from Mr. Collector Place filed by the defendants, non-suited the plaintiff with costs under Section 10, Regulation II, 1802.

Padre Manente appealed to the Provincial Court, and stated amongst other matters that the nunjah land in the village of Mapadoo having been granted to him by the Board of Revenue in pursuance of orders from the Government, Mr. Collector Place was not competent to pass any order affecting the right to the said lands inconsistent with the terms of the sunnud granted to him by the Board.

It appeared to the Provincial Court that a grant of the land had not been made to, or in the name of, the appellant; but that the persons who possibly might be justified in complaining were certain persons denominated "the new settlers," and not Padre George Manente, the appellant was, therefore, by this decree nonsuited with costs. The Provincial Court at the same time reversed the decision of the Zillah Court, holding that the Judge had erred in the application of Section 10, Regulation II, 1802, to the case.

Padre Manente renewed his appeal from the decree of the Provincial Court to the Sudr Court, who observed that the plaintiff had failed to produce the Government sunnud or grant under which he claimed, and the record contained no information in respect of the nature of its contents. An instrument of this description was obviously of the first importance, and it could not have escaped the observation of the plaintiff, with whom alone it rested to prove the goodness and perfection of his title, that the production of such a document, if it were calculated to prove a complete title in him, was essential to the establishment of his claim. But, in proportion as its production might, under such circumstances, have been conclusive of the question, its non-production argued extreme caution on the part of the plaintiff indicative of his conviction that it made rather against, than for, his claim, probably either because it may have been only a lease of the lands for a specific term of years, and not the conveyance of any *real* interest in the land, or because it may have vested in *him*, the plaintiff, no right of property or possession whatever.

Of the documents produced by Padre Manente in the lower Courts, it was remarked—

1*st*.—That the letter from the Secretary to the Board of Revenue to the Superintendent of the jaghire, showed that an application had been received from Padre Manente for ground "for the new settlers;" and that it had been resolved to apportion the lands in the villages of Cattoor, Coovum, and Mapadoo, partly to the Mirassi inhabitants and partly "to the new settlers."

2*ndly*.—That Mr. Secretary White's letter, recorded by the Provincial Court, showed it to have been the intention of the Government to appropriate land to the use of certain new settlers, who, for the purposes of cultivation and manufacture, were to experience every possible aid and encouragement; but it by no means showed it to have been in the contemplation of Government that Padre Manente was to participate in the land intended to be allotted; and, on the contrary, expressly referred

him, individually, to the eventual liberality of the Government and the Court of Directors, and

3*rdly.*—That Mr. Collector Clerk's letter was expressive of his anxiety to provide against a neglect of cultivation in the farm of Coovum, of which it had become necessary that he should take immediate charge. And they held out a promise from him that the new settlers should continue to cultivate "the ground mentioned in the new cowle as waste ground."

These letters, if they could be taken as proof of anything, proved only that the Government had come to a determination to allot certain lands in the jaghire to certain new settlers. On what conditions, or with what limitations, the plan was to proceed to effect, was not therein specified. It was clear they did not convey nor imply an intention of conveying any description of right or privilege to Padre George Manente, neither did they contain any direct proof that the measure, which was stated to have been projected in favour of the new settlers, was carried into execution.

Yet, on these letters the appellant rested his claim. They were the only documents on the record by which he sought to maintain his issue. The Court declared their opinion that the evidence produced by the appellant was altogether insufficient to support his case.

With regard to what was advanced by the appellant against the decree of the Provincial Court, namely, that "at once they might have understood that the appellant did not claim the land for his own use" but for the use of his dependents, the Court observed that the Provincial Court, in ascertaining the cause and ground of complaint, were necessarily guided, not by what might be inferred from, but by what was actually expressed, in the petitions. They were specific in demanding the land as *his own*, as having been by sunnud granted to *him*, as having been enjoyed and cultivated by *himself*. Had the new settlers been desirous of trying their title to the land, they might have been represented in the Courts with as much facility as the Mirassi inhabitants; and without committing their cause to a Vakeel not duly empowered, in itself a palpable and unanswerable ground for rejecting the suit *in limine*, had the original plaint justified the Zillah Judge in considering the claim preferred by Padre Manente as made, not on his own account but on that of the persons whom he called his dependents.

Admitting, however, for a moment that this objection was waived; that Padre Manente had appeared as a suitor on behalf of the new settlers; and that it was their title, not his own, which he sought to establish, still it was demonstrable that his failure in the one object had been not less complete than in the other. The documents exhibited proved no absolute right of property to the nunjah land situated in the village of Mapadoo in the new settlers, whilst on the other hand the presumptive evidence of that right was strongly in favour of the respondents and other Mirassi inhabitants of the village, whether derived from occupancy antecedent to the period at which the lands in question may have been disposed of by a lease for years, (which lease necessarily failed at the end and completion of the term), or from the sunnud granted by Mr. Collector Place, or from actual possession, all showing a title in the Mirassi inhabitants, the possessors, which could not possibly be disturbed until defeated by proof of a better.

For these reasons the Court dismissed the appeal, the appellant paying all costs of suit.—*Vol. I, page* 19.

SCOTT AND GREENAWAY, J. J.

No. 2 *of* 1810.

Lakhiraj land—Life-tenure—Regulation XXXI of 1802—

Where Government had granted certain lakhiraj land to A, a Mahomedan, who died leaving a son (M) and a daughter (N), and where D (the son of N) sued B and C (sons of M) for a half share in virtue of his mother, it was found that neither of the parties were entitled to claim the village, because the grant was not hereditary and the purwanah had not been registered agreeably to Section 16, *Regulation XXXI of* 1802*; but*

HELD *that, although none of the parties were entitled as the land had not been granted to A and his heirs, the judgment of the Provincial Court must be confirmed allowing B and C to remain in possession as the Collector had failed to resume for two years.*

THIS suit was instituted in the Zillah Court of Trichinopoly for the recovery of a half share of a lakhiraj village.

The village in question was originally granted to Cauja Aboobuker, who left a son and a daughter, namely, the father of the defendants and the mother of the plaintiff.

The Zillah Court of Trichinopoly held that neither the plaintiff nor the defendants were entitled to the Government share of the produce in the village, "if the Collector of the zillah were to act conformably to Regulation XXXI, 1802," because the grant was not hereditary, nor the purwanah registered agreeably to form; but, as the defendants had been permitted to hold possession of the village notwithstanding their invalid title, it appeared to the Zillah Judge to be just that the plaintiff,

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as heir to the daughter of the original grantee, should enjoy his mother's share "equally as well as the defendants, on the ground of their being the heirs of his son." He accordingly adjudged to the plaintiff one-half of the Government share of the produce of the village and to the defendants the other half, until the Collector should carry into execution the provisions of Regulation XXXI, 1802, and the defendants were made liable for the costs of suit.

The defendants appealed to the Provincial Court for the Southern Division, who held that the respondent had no hereditary claim whatever to a share, grounding their opinion on a futwah delivered by the Mufti of their Court in another appeal, wherein he had declared that lands exempted from revenue revert to Government on the decease of the person or persons to whom the grant may be made, it being merely a life-tenure; and the Court further held that it would be their duty to direct the Collector to take immediate possession of the village had not the appellants duly registered their claim in the Collector's cutcherry as prescribed by Section 16, Regulation XXXI, 1802, and had not their claim to a life-tenure of the village been tacitly confirmed by the omission of the Collector for the space of upwards of two years to resume the lands on the part of Government. They reversed the decree of the Zillah Court, and adjudged that the appellants should be put in possession of the village; that the produce thereof, for the period during which it was under charge of the Collector, should be accounted for the said appellants; and that the respondent should pay all costs of suit.

The plaintiff appealed from this decree to the Sudr Udalut as a pauper.

They observed that he rested his claim to a moiety of the village on the right which he derived from his mother as the daughter of the original grantee; but it was obvious that, unless the village in question were heritable property, unless it were granted to Cauja Aboobuker *and his heirs*, the descent of the appellant from Cauja Aboobuker would avail nothing towards the establishment of the claim which he set up. That the village was granted to Cauja Aboobuker *and his heirs* nowhere appeared, nor was it averred by either party in the suit. The purwanah No. 17 of the Zillah Court's proceedings, on which the appellant relied, would at the utmost be considered only as granting a life-tenure, and there was no document nor any evidence whatever to show that Cauja Aboobuker was vested with more than a life-interest in the village.

Under these circumstances it was manifest that the appellant possessed no legal claim on the village by virtue of his descent from Cauja Aboobuker, and the Court were of opinion that he had entirely failed to establish any right or title to a share of the village in question, and dismissed the appeal.—*Vol. I, page* 43.

OFFICIAL PAPER.

Nandur Tank-bed in the Kistna District.

Read the following Proceedings of the Board of Revenue, dated 26th January 1870, No. 564:—

Read again endorsement from the Acting Collector of the Kistna District, dated 25th October 1869, recorded in Board's Proceedings of 6th November 1869, No. 8,218.

Read also letter from the Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Amaravati, 20th December 1869, No. 380.

I have the honour to forward herewith copy of a letter from the Superintending Engineer, 2nd Division, dated 11th December 1869, No. 228, in which, with reference to Board's Proceedings, dated 6th November 1869, No. 8,218, he states that he has carefully inspected the large Nandur Tank in the Bapatla Talook, and is of opinion that there is no necessity for maintaining it as a reservoir. I, therefore, request sanction for the sale of the area of this tank-bed by auction, as there is likely to be much competition; and this mode of disposing of durkhasts is likely to give general satisfaction.

Enclosure No. 1.

From the Superintending Engineer, 2nd Division, to the Officiating Collector of the Kistna District, dated Camp at Sandole, 11th December 1869, No. 228.

Referring to Proceedings, Board of Revenue, No. 8,218, dated 6th November 1869, I have the honour to point out that according to the Tahsildar's and Curnum's accounts the whole of the bed of the old Nandur Tank, except a low spot some twenty-five acres in extent, was given to the ryots for cultivation at different times, commencing from some period when Mr. Newill was Collector of the Guntoor Zillah.

2. They have relinquished parts at times, and the Tahsildar informs me that he has instructions not to allow land in tank-beds once relinquished to be taken up again. I cannot but think that he has misunderstood the orders.

3. The Nandur Tank covered a large flat space of ground intercepting the drainage of a great area of country and supplied by the old Commamore Channel from the Kistna in fresh. Everything tended to silt it up, and for some years its power of containing water could have been but small. It is so flat that much difficulty was found in draining the parts, more distant from the deep channel close to the tank, which irrigates from its upper parts and drains from its lower. In consequence of this difficulty several of the holdings were relinquished, but it has now been remedied, and the whole extent is commanded by the new Commamore Channel.

4. It is, of course, impossible, under the circumstances I have stated, to use one portion of

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the space as a tank without flooding the rest, neither is there any necessity for maintaining it as a reservoir. I inspected the tank carefully yesterday.

In the letters above recorded the Acting Collector proposes the abandonment of the Nandur Tank, in the Bapatla Talook, and the sale of the land by public auction.

2. The Superintending Engineer, after personal inspection of the tank, is of opinion that it has become useless as a reservoir, and recommends its being made available for cultivation.

3. The tank is one of those extensive reservoirs which before the construction of the anicut was filled during the high freshes of the Kistna, but it is now so much silted up as to be useless as a tank. Further, the tank is not now needed, as the new Commamore Channel affords an ample supply of water to all the lands formerly dependent on the tank, while the land commanded by the same channel is very valuable on account of the deposit of river silt upon it.

4. The Board, therefore, resolve to recommend to Government that the Collector's proposal be sanctioned as the tank is Government property, and may fairly, therefore, be sold under the principles laid down in Government Order, 7th September 1860, No. 1,545.

5. Should Government be pleased to sanction the proposal, the Acting Collector will be instructed to sell the land in convenient lots, due provision being made for such channels and roads through it as may be requisite for the accommodation of purchasers.

Order thereon, 12th March 1870, No. 357.

The measure proposed by the Board in paragraph 4 of their Proceedings is sanctioned.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

SEASON REPORT.

NORTHERN SECTION.—There were pretty good rains in Ganjam and the Northern Taluks of Godavery, where at one station a slight fall of hail also occurred. In the other districts the rains were slight and scanty.

GANJAM.—In Ganjam, ryots were engaged in ploughing and otherwise preparing their fields for cultivation.

VIZAGAPATAM.—In Vizagapatam, the cultivation of *sugarcane* had commenced, and the harvesting of *green gram, raggy,* and *gingelly* was in progress.

GODAVERY.—In the Godavery District, seed-beds were being formed where water was available for irrigation, and *punjah* lands also were to some extent being ploughed and prepared for the reception of seed. The *gingelly* crop was ripe and promised a good out-turn, while *cotton, lamp-oil seeds, tobacco, chillies,* and *choy-root* were already harvested with excellent results. Summer *paddy* under channels and garden products generally were in good condition.

KISTNA.—In the Kistna District a heap of straw was burnt up, and a man was killed by a stroke of lightning; but beyond this nothing serious happened from the thunder and lightning which accompanied a lowering sky on the 20th of the month in the Palnad and Santanapally Taluks. All the crops of the last fusli were completely cut and carried, and the *lamp-oil seeds* sown a second time were coming to maturity.

NELLORE.—There was little or no fresh cultivation, and the crops already sown also were not in a flourishing condition owing to injuries sustained from the fall of hail-stones, blight, and absence of timely rains. In a few taluks of the district, *pedda-kesari, potti-kesari, iswara-korra,* and some of the dry grains were harvested, but with what results is not reported.

Prices rose in Ganjam, Vizagapatam, and Nellore. In the other districts they were almost stationary.

Public health was good in Ganjam; but not so in Vizagapatam, Kistna, and Nellore, where fever and small-pox were more or less prevalent. In Godavery the case was worse. In addition to the general prevalence of small-pox and measles, cholera broke out in two taluks and carried away forty persons in a single village. Distress also had begun to be felt from the scarcity of water and pasturage in the upland taluks, but measures were adopted to sink good-water wells.

Cattle were not entirely free from disease.

CEDED DISTRICTS.—The rainfall was very scanty, and was confined to slight drizzling here and there.

CUDDAPAH.—Cultivation was still being carried on to some extent under irrigation works in the Cuddapah District, and standing crops were generally doing well. *Paddy, cotton, corra,* and *cholum* were harvested in some localities, but in no case was a satisfactory return realized.

BELLARY.—In Bellary, lands under tanks and channels were being cultivated with *sugarcane* and *indigo;* but, notwithstanding this, agricultural operations were very limited owing to the failure of rains. *White cholum, paddy,* and *cotton* were harvested.

KURNOOL.—In Kurnool, second *crop paddy* was cut, and *cotton* was being picked. Pasturage was scarce over the greater part of the district.

Prices were rising in Cuddapah, and manifested a similar tendency in Bellary.

There was no cholera, but fever and small-pox were of general prevalence. In Bellary the distribution of fever pills worked some good.

The health of cattle was perfectly good over the greater portion of the Cuddapah District. In the other two districts cattle suffered from disease.

EAST CENTRE.—Very little rain fell in this section.

MADRAS.—Crops were withering and tanks and wells drying up all over the Madras District, except in the Ponnery Taluk, where the unusually copious rains of January had brought a considerable supply of water into the tank.

NORTH ARCOT.—In North Arcot, small tracts of land, here and there, commanded by well and channel irrigation, were sown with *gingelly-seed, cholum, raggy,* and *paddy;* but the condition of standing crops was anything but satisfactory, save in the case of *sugarcane* in Palmanair Taluk. *Paddy* and a few dry grains were harvested, but yielded very indifferently.

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South Arcot.—In parts of the South Arcot District, *kad-paddy*, *sugarcane*, *raggy*, *indigo*, and *gingelly-oil seeds* were cultivated. Considerable difficulty, however, was being felt from the scarcity of water for drinking purposes.

Prices remained almost stationary.

Fever, small-pox, and cholera were in existence, but did not seriously affect public health.

There was very little disease among cattle.

Cauvery.—Rains fell, but in very inadequate quantities.

Tanjore.—In Tanjore, the Cauvery and other rivers were quite dry, and there was no water in the tanks. In some localities *gingelly-seed*, *cotton*, *&c.*, were cultivated in *punjah* lands, while all over the district *sumba peshanam* was harvested with fair results.

Trichinopoly.—In Trichinopoly, *valan paddy*, *cumboo*, and *cholum* were cultivated and *kodaikar* was reaped. The Ayyar river received a good fresh, which went some way to compensate for the very insufficient rainfall.

Prices were almost the same as in the preceding month.

Guinea-worm in Trichinopoly and fever and small-pox in Tanjore were slightly prevalent, but public health, on the whole, did not materially suffer.

Cattle were in tolerably good health.

Southern Section.—There was a slight rainfall during the month.

Madura.—In the Dindigul and Periakolam Taluks of the Madura District, *cotton* and *indigo* were cultivated, and in other localities *punjah* lands were being prepared for cultivation. The river Vigay received no freshes, the supply in tanks was diminishing, and a general scarcity of water was felt in many parts of the district.

Tinnevelly.—In Tinnevelly a few dry grains were sown, and the standing crops looked healthy. The *peshanam* crop, *dholl*, and *gram* were harvested, but the out-turn was below the average.

Prices were stationary.

Cholera existed in both the districts of this section, though not in an epidemic form. In other respects public health was good.

Cattle also were for the most part healthy.

West Centre.—There was a general, but not abundant, fall of rain in this section.

Coimbatore.—In Coimbatore, *cholum* and *gingelly-oil seeds* were sown. *Varagoo* and *paddy* were harvested, and *cotton* was being picked.

Neilgherries.—On the Neilgherries, *corally*, *samai*, and *raggy* were being sown.

Salem.—In Salem, tanks received a small supply of water, and *cholum*, *raggy*, *gingelly-seeds*, and *paddy* were cultivated in some localities. A few of the standing crops were injured by attacks of insects, but generally they fared well. *Cotton* and *indigo* plants were reported to be fading from the failure of rains.

Prices were stationary.

Cholera and fever prevailed in Salem and Coimbatore, but not to any great extent. On the Neilgherries the state of health was good.

Cattle suffered from disease in Salem.

West.—The rainfall was slight, but there were indications of the setting in of an early monsoon in South Canara.

South Canara.—In South Canara the *third-crop rice* and dry grains were completely harvested, and preparations were made for the sowing of the first crop.

Malabar.—In Malabar the sowing of the kavy or *first-crop rice* commenced.

Prices rose over those of the previous month in South Canara, but were stationary in Malabar.

Fever and small-pox were prevalent to a small extent.

The health of cattle was generally good.

***Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency for the Month of April* 1870, *Fusly* 1279.**

DISTRICTS.		Prices of Grain and Sea Salt.														Rainfall.				
		2nd sort Rice.		2nd sort Paddy.		Cholum.		Raggy.		Horse Gram.		Sea Salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Fusly 1278	Fusly 1279	Fusly 1278	Fusly 1279	Fusly 1278	Fusly 1279	Fusly 1278	Fusly 1279	Fusly 1278	Fusly 1279	Fusly 1278	Fusly 1279					
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam	289	263	115	103	197	170	169	121	173	166	297	319	1·20	1·40	0·50	0·60	0·92
Northern Section.	Vizagapatam	873	299	166	122	217	166	215	155	199	166	254	309	2·0	...	0·30	0·60	0·72
Northern Section.	Godavery	282	246	131	105	154	135	156	115	193	185	245	276	0·98	0·07	0·43	0·31	0·45
Northern Section.	Kistna	357	322	156	146	178	180	156	156	209	219	281	348	0·27	...	0·07	0·10	0·11
Northern Section.	Nellore	365	841	172	158	156	175	138	153	197	262	263	324	0·11	...	...	0·73	0·21
Ceded Districts.	Cuddapah	405	419	183	193	180	192	168	172	181	231	312	357	...	0·34	0·09	...	0·10
Ceded Districts.	Bellary	377	377	153	157	127	174	110	161	143	196	394	422	...	...	...	0·41	0·10
Ceded Districts.	Kurnool	382	417	168	184	149	200	151	188	202	254	331	369	...	...	...	...	...
East Centre.	Madras	436	341	197	146	230	240	240	205	264	254	267	296	...	...	...	1·05	0·26
East Centre.	North Arcot	877	327	164	134	183	173	182	167	179	170	241	290	0·70	...	...	0·20	0·22
East Centre.	South Arcot	400	283	189	129	213	126	216	149	216	173	274	315	...	...	...	0·01	0·003
Cauvery.	Tanjore	335	265	152	123	179	131	163	126	185	194	256	803	0·37	...	...	...	0·09
Cauvery.	Trichinopoly	367	296	166	133	157	130	184	136	202	154	264	329	0·75	1·40	0·50	1·08	0·93
Southern Section.	Madura	377	362	174	166	151	168	168	158	165	168	282	340	1·97	0·93	1·50	2·50	1·72
Southern Section.	Tinnevelly	366	370	170	172	...	163	176	184	199	230	289	345	0·47	0·80	0·87	1·17	0·83
West Centre.	Coimbatore	452	380	218	188	259	254	209	188	238	164	337	387	0·59	1·56	0·31	0·81	0·83
West Centre.	Neilgherries	533	640	...	...	291	304	246	304	267	213	400	457	...	...	2·0	2·39	2·19
West Centre.	Salem	355	326	167	144	196	174	168	142	177	143	299	344	0·02	1·00	1·25	0·65	0·73
West	South Canara	338	374	145	165	...	...	216	232	266	275	254	284	...	0·30	0·10	0·80	0·30
West	Malabar	407	404	189	186	...	...	180	193	278	263	293	339	0·06	2·80	1·00	1·10	1·24

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Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of April 1870, *Fusly* 1279.

	DISTRICTS.	COTTON.				Market rate of cleaned Cotton per Candy of 500 lbs.	INDIGO.				Market rate of Cake Indigo per Maund of 25 lbs.
		Fusly 1278.		Fusly 1279.			Fusly 1278.		Fusly 1279.		
		Extent.	Assessment.	Extent.	Assessment.		Extent.	Assessment.	Extent.	Assessment.	
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	63	85	84	98	153	......	....	......	....	72
2	Vizagapatam ...	246	638	1	11	136	181	800	......	....	36
3	Godavery ...	......	......	......	......	182	......	....	......	....	72
4	Kistna ...	......	......	......	......	155	....	....	......	.....	60
5	Nellore ...	......	......	......	......	149	62	308	280	1,209	51
6	Cuddapah ...	......	......	......	......	50 to 166	....	....	529	1,906	40 to 70
7	Bellary ...	......	......	.....	......	163	176	839	80	93	64
8	Kurnool ...	......	......	......	......	158	....	....	....	......	55
9	Madras ...	......	......	......	......	95	16	87	39	127	50
10	North Arcot ...	......	......	......	......	130	720	1,396	314	623	54
11	South Arcot ...	3	7	4	12	*	624	1,204	1,058	1,730	*
12	Tanjore ...	......	......	140	101	156	....	....	....	.....	18
13	Trichinopoly ...	......	......	......	......	133	....	....	....	.....	14
14	Madura ...	13	24	442	629	100	......	....	6	20	40
15	Tinnevelly ...	2,14,437	2,05,228	2,29,206	2,23,342	157	376	384	504	329	31
16	Coimbatore ...	......	......	......	......	131	....	....	....	......	31
17	Salem ...	90	139	152	293	194	10	21	5	14	40
	Total...	2,14,852	2,06,121	2,30,029	2,24,486	......	2,165	4,489	9,815	6,051	......

* Prices not given in the Collector's return.

REVENUE BOARD OFFICE, (Signed) J. GROSE,
MADRAS, 24*th May* 1870. *Acting Secretary.*

MISCELLANEOUS.

THE PERMANENT SETTLEMENT—BENGAL.

A controversy upon this great and vexed question has again broken out in the press. The controversy has arisen from the persistent opposition of the Zemindars of Bengal to the levy of a local cess upon them for roads and educational purposes. A few years ago they declared the application of the income tax to themselves to be a breach of the Settlement made with them by Lord Cornwallis, and they now resist the levy of proposed local cess upon the same ground. In these circumstances it is absurd to deprecate controversy as to the real nature of the settlement. The Zemindars themselves so interpret that settlement as to claim rights in the soil which the State itself makes no pretensions to in any part of India, while they claim, in virtue of it, immunities which no other class in India, nor even the most ancient freeholder in our own land would venture to assert. In the Bombay Presidency, the land revenue is settled for periods of thirty years. But no landholder in the Western Presidency dreams of claiming exemption from the income tax, or of opposing the levy of extra cesses upon the land for local purposes, on the ground that the land revenue has been settled with him for thirty years. At this moment the Commissioner of the Central Provinces is proposing to levy a very heavy local cess upon Chutteesghur—the land of which has only just been settled for twenty years—for the construction of a railway between Nagpore and Raepore. Does the settlement of the revenue in perpetuity make the least difference in the case? The claim put forward by the Zemindar reduces the State to the dilemma of leaving Bengal destitute of roads and education for all time, or of taxing the people of some other province for the purpose.

The interpretation which the Zemindars place on the Cornwallis' settlement is—

(1.) That it made them absolute owners of the land.

(2.) That it gave them an absolute immunity from direct taxation for all time.

Instead of grappling with these delusions—for they are delusions—and bringing them to the test of exact inquiry, there is a disposition on the part both of Indian statesmen and Indian publicists to accept this interpretation, and while lamenting the error of the settlement to deprecate all interference with it as "a breach of faith." On the other hand, there are writers whose sense of justice is so shocked by these pretensions, that they demand a revision of the settlement at all costs. Thus a correspondent of the *Friend of India* of the 28th April writes:—

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"The Permanent Settlement is an unlawful engagement and of no effect, because representatives of the people, then living, gave away to certain persons and their heirs after them for ever, that which did not belong to the people of that generation to give away for ever. The law is an unjust law, because it exempts precisely that portion of the community who have benefitted most from the common fund of labour, from contributing their due quota towards the public expenditure; while it levies additional taxes from the bulk of the people—owners of personal property who have not derived from this common fund the amount of benefit which has accrued to real property. The Permanent Settlement Act is a violation of the first principles of justice and taxation, which demand that each individual of the community shall be taxed in proportion to the value of his property, in the enjoyment of which he is secured by the collective industry of the whole community."

The writer, it will be seen, makes the Zemindar a present of all his claims. The framers of the Settlement contrived in some way or other to give what it was not in their power to give, and to grant immunities which it was a violation of all justice to confer. The representations the Zemindar prefers—are admitted; and, shocked by their injustice, an appeal is made to the *summa lex* to overthrow them.

"The cancellation of an unjust law is the paramount duty of Government which exists solely for the administration of equal justice; and a charge of breach of faith would properly lie against the wilful perpetuation of a public wrong, not against the annulment of an unlawful and unjust promise unwittingly made in an age of comparative ignorance. The question, Shall Government be unfaithful to its engagement with the landholders? is answered by the question, Should Government commit the greater "breach of faith," so to say, of unjustly levying taxes on the non-landholders who constitute the bulk of the nation, in excess of the quota for which they are fairly liable? The re-distribution of the public expenditure, by their own representative, in due proportion among the members of the community, is by no means analogous to the repudiation by an interested party of a bond for which a valuable consideration has been received. Change, to be injurious, must be a change from right to wrong, not from wrong to right; a departure from the right path, not the return to it: and, an unlawful engagement which violates higher obligations is an engagement more honoured in the breach than the observance."

This letter has proved the occasion of a widespread discussion. The *Bombay Gazette* was the first to call attention to it; but, while allowing that "there are crises in the lives of States when men are bound to remove an enormous injustice," does not admit that the case of the Zemindars of Bengal is one for the application of the exceptional law, and winds up a declamatory article on the subject as follows:—

"No highflown sophistry can justify a Government in failing to redeem a public pledge, or warrant a revolution in cold blood. We might just as reasonably resume possession of the lands in this island of Bombay, and settle them afresh, on the ground that the representatives of Charles II. permitted themselves to relinquish his rights, as subvert the Permanent Settlement on the ground that Lord Cornwallis was an ignorant man who parted with that which he had not to give. The remedy must be found in some plan that does not involve a flagrant wrong."

The same journal recurs to the question a day or two afterwards to tell us that—

"Whether Bengal pays too much or too little, whether the ryots suffer while the Zemindars revel in riches, really these things have nothing to do with the question—Shall a solemn settlement, actually described as perpetual, cease and determine? If the Zemindars of Bengal pay too little, the proper complement, whatever it may be, must be obtained by some other process than a breach of faith. That is a problem for the Government to solve. So also, if the ryots are hard-pressed, measures may be devised for their relief—that is a separate question. And probably we shall only make a decided step towards the accomplishment of the double aim when the philosophers cease to demand the abrogation of a settlement, distinctly named perpetual, and when, recognizing its indefeasible character, they employ their stupendous abilities in discovering how the Zemindars may be properly taxed, and how the ryots may be released from avoidable suffering."

The *Times of India*, true to its traditions, deals more pertinently with the subject, and, after asserting that the land of Bengal ought to pay "nearly 18 millions sterling instead of the paltry 4 which it now pays," points out "another consideration which impels the demand to have the Bengal perpetual settlement brought to the bar of public opinion."

"We are told that it is a 'sacred contract,' a 'solemn contract;' and the false issue that it is a 'political contract,' is also brought forward. But, if a contract, it is not a one-sided bargain. The Government of India has kept its part of the contract with a purblind literal exactness, to the grievous injury of the ryots, and with excessive fiscal injustice to the rest of India. It is high time to inquire most rigorously how the other parties to the contract have fulfilled their portion of its terms. The discouraging condition of our finances, the irritation caused by special direct taxation, and the urgent material needs of the country, all combine to support the demand for a thorough revision of the Cornwallis' Settlement, and an inquisition into the manner in which its conditions have been fulfilled by those who have absorbed so enormous a share of State property."

The same journal declares in a subsequent article that the "revision of the Permanent Settlement—is a measure now urgently called for, alike on behalf of the ryots of Bengal and the whole tax-paying public of India."

The *Daily Examiner* regrets to observe an increasing tendency "among Indian politicians to underrate the force of Lord Cornwallis' engagement with the landholders of Bengal."

"No one can doubt that in public there is a 'higher law' than legal right, or past promise. Indeed, if there were not, political revolution would be impossible. Yet this 'higher law' is a thing which cannot properly be discussed or appealed to beforehand to justify even the most insignificant change. It comes into play at that point where

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expediency passes into necessity, where the strain of the past upon the present becomes intolerable. The experience of history shows that it is peoples, and not Governments, who execute this higher law; and the proof of its being such lies in the fact that the Government is an involuntary instrument in the matter. Some time or other posterity always, and inevitably, does get rid of the engagements of the past, sometimes suddenly and forcibly, sometimes by composition, sometimes by repudiation. There is no argument in favour of the Permanent Settlement in its existing form, but that of the binding nature of the engagement made by Lord Cornwallis. The question whether we should keep that engagement is one that does not admit of discussion, for nothing but necessity can justify a breach of faith, and the discussion of the necessity is a contradiction in terms. Of course, there is a distinction between political and physical necessity; but we decline to undertake the task of deciding what would constitute a necessity for the abolition of the Permanent Settlement. There is ample evidence, of a negative character at least, that no such necessity exists at present."

The *Englishman* affirmed very recently that Lord Cornwallis' Proclamation placed the Zemindars "in absolute possession of the land in Bengal, on payment of a certain fixed assessment, or rental to the State." Property, however, is now universally acknowledged to have its duties as well as its privileges, and the writer proceeded to warn the Zemindars as follows:—

"The Bengal Zemindars, especially those who have enjoyed some sort of education, are always ready to quote the Permanent Settlement, as if it exempted them from the discharge of all duties to the State, beyond that of paying what is now a ridiculously low tax upon their lands. They seem to forget that they are required to execute all the zemindari engagements which were incumbent upon their predecessors under the empire of Delhi, among which was the obligation to make new roads where wanted, and to keep in good repair those already in use. Independently of this consideration, their present obstructive conduct is fraught with much peril to themselves. It is well to be prudent in agitation. Silence, they should remember, is golden, and is one of the qualities of the wise man. But it is not wise to draw too much attention to Lord Cornwallis' blunder, or to excite inquiry into their own original position in the country. The British Parliament, we would warn them, has an unpleasant habit of correcting mistakes and rebuking folly. Have they not read how that Parliament, by enormous majorities, resolved to do away with the Established Church in Ireland? Are they not aware that the same Parliament is preparing to deal with a very high hand with landed property in that country,—a question closely analogous with that of the Permanent Settlement in Bengal? Is there any reason why the Bengal Zemindars should not be subject to the same tribunal, or why they should be excepted from Parliamentary suspension and control?"

The *Madras Mail* demands, "Can a principle of perpetuity be recognized in anything earthly?"

"Can one generation assume a right to tie up property for all time? Private individuals are not allowed to do so. The Thelusson case showed the possible inconveniences of such a power, and the power was limited by law to a period sufficient to include all interests living at the time. We see no reason why the same principle should not be equally applicable to Governments, or why any permanent settlement should not be declared liable to revision *after the decease of all now living interests in it.*"

The *Mofussilite* defends the original granting of the Settlement as a defensive measure against the perpetual exactions of the East India Company:

"The East India Company of merchants, and not the Crown of England, it was, which was then governing Bengal, and much as may be said in favour of that Company, what in Lord Cornwallis' time it mainly insisted on, was large remittances—large profits from India!

"Had Lord Cornwallis been governing the country direct for the Crown, its trade open to all as at present, no Permanent Settlement of the land-rent would have been accorded. That Settlement, however, is a solemn compact, and, so long as the Zemindars remain the public-spirited men the majority of them unquestionably are, he who proposes to break the settlement practically proposes to wound the great British Empire."

It will be observed that there is no attempt in these extracts to determine what the nature of the settlement really is. The Zemindars' version of it is assumed—and by some strange perversity *always* is assumed—to be the correct one. Towards the close of the discussion, however, a letter appeared in the *Englishman* with the signature S. P. Q. R. lifting the controversy at once out of the groove in which it was running. We reproduce it *in extenso*:—

"The Bengali 'Magna Charta' is embodied in Regulation I., 1793, and the Bengali Zemindars must stand or fall by that enactment. I take it, but it may be erroneously, that Section 7 of that Regulation contains every thing that was ever promised, or was ever intended to be promised, in regard to the non-augmentation of the land assessment. It runs as follows:—'The Governor-'General in Council trusts that the proprietors of 'land, sensible of the benefits conferred upon them 'by the public assessment being fixed for ever, 'will exert themselves in the cultivation of their 'lands, under the certainty that *they will enjoy exclusively the fruits of their own good management and industry*, and that no demand will ever be 'made upon them, or their heirs, or successors, by 'the present or any future Government, for an 'augmentation of the public assessment *in consequence of the improvement of their respective estates.*'

"Nothing can be simpler or clearer than the promise here made. The Zemindar shall be assured in the enjoyment of every increase of revenue from his estate which can be shown to have resulted from *his own good management and industry*, but if the augmentation can be shown to have had its origin in any source not dependent on *his own good management and industry*, then I should say, and I do not see how it can be gainsaid, that the Zemindar is as liable as any other section of Her Majesty's subjects to be assessed in respect of the gain thereby accruing. For instance, suppose it can be shown that the railway, by passing through or near an estate, has increased its value twenty-

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fold, is it reasonable to affirm that wealth, which has been produced entirely, possibly, by the application of capital subscribed by members of the community other than the Zemindar who is so enormously benefitted, shall not contribute its quota to the needs of the State? I am one of those who believe it utterly unreasonable. I have not a copy of the Regulation by me just now, but I think it will be found that ample provision was made, either in that enactment or another of about the same date, for making the landholders contribute towards the maintenance of the village Chowkedars and the zemindari dâks, so that your surrender is by far too generous, when you admit that 'not the slightest allusion is made to cesses leviable in the future for the construction of roads, the diffusion of education, *or any other purpose*.' Provision was also made, or rather it would be more accurate to say, the door was left open for making provision for the protection of the ryots, and it is this safeguard which has allowed of such legislation as Act X of 1859, and I believe the door is so wide as to allow of the entire severance of the relations now existing between landlord and ryot, to such an extent, that is, as to leave the Zemindar in the position of a simple recipient of his share of the proceeds of the rent, or whatever political economists may designate it, or to the position of an annuitant on the estate; and that the Government might, if it thought right and proper to do so, receive its own share directly from the ryot; and, if this could be done, what should possibly prevent any Government from increasing the ryots' assessment, instead of permitting the Zemindar to do it as is done now? The fact is, and *here* I believe lies the whole injustice of the permanent settlement, the Zemindar, as a rule, revels in wealth which has been solely produced by the *good management and industry* of his ryots, to which he has contributed not a single unit of labour or of thought."

The journal in which this letter appears apologizes for inserting it, and declares that it would have declined the proffered contribution but that the writer "is a gentleman of unusual intelligence, of unblemished honour, and in all the relations of private life upright and estimable." The only contribution that really touches the gist of the inquiry is declared to be "so illogical, so utterly untenable, and withal so dishonest, that it is one of the mysteries of the human mind that it should ever have recommended itself to a writer of such undoubted integrity and worth." Whether S. P. Q. R. be right or wrong in the interpretation which he puts upon the Settlement, the value of his letter is the same. It lifts the controversy from the ruck it had got into, and suggests that we had perhaps better ascertain what the exact nature of the Cornwallis Settlement is. We remark at the outset that if men's sympathies are on the wrong side in this controversy, they will be slow to understand it. "All intellect is in the first place moral" says Carlyle. "It is the heart always that sees before the head *can* see: let us know that." This Zemindar controversy is eminently a controversy of this kind. It is a question between the wealthy few and the suffering many. We find throughout these provinces a body of men claiming, in virtue of the Permanent Settlement, rights in the soil to which the State itself makes no pretensions in any part of India. The notion has grown up and been fostered that the Zemindars have become by virtue of it the absolute proprietors of the soil—a claim put forward, as we have said, by the State itself in no part of India. It will be admitted that the Settlement could confer no rights upon the Zemindar that were not owned by the State. Now two facts are indisputable—*first*, that the Settlement was merely the commutation of the State claim of *khirauj* upon the land. Whatever that *khirauj* was, the right to exact it was conferred upon the Zemindar, and nothing more. The Settlement could confer nothing more, for the State owned no more. If, then, the Zemindar of to-day claims a right to anything beyond this *khirauj*, he must show some title to it other than the Settlement. It is equally indisputable in the *second* place that the framers of the measure intended that the claim of the Zemindar upon the cultivator should be as permanent as the claim of the State upon the former. Well, what have we seen from the very first, and what do we see to-day? The Zemindars claim to be the absolute owners and landlords of the soil—a claim which the State itself prefers in no part of the empire. They claim a right to enhance their rents at pleasure, and, as a matter of fact, have confiscated throughout the greater part of these territories all those occupancy rights in the land which the State itself so scrupulously respects. We are stating no doubtful fact, but that which is notorious and admitted on all hands. The Zemindars of these provinces claim to be the absolute landlords of 40 millions of people and 80,000 square miles of territory, their title being a settlement which simply assigned to them the right to collect the impost known as the *khirauj*. They have so abused the power conferred upon them as to have destroyed over the greater part of these provinces those subordinate rights which are everywhere else respected by the State itself, as having existed from time immemorial in the country. Lastly, these Zemindars themselves, in the great majority of cases, are a new race, their fortunes being built upon the ruin of the original contractors with Lord Cornwallis. Under the peremptory proceedings of our Revenue courts in the early years of the settlement, the men with whom the settlement was made were beggared and ousted to be succeeded by the present Zemindars, who, as successors to these unfortunate men, now prefer these hitherto unheard of claims upon the soil. The enormous difficulty of dealing with the question must not deter us therefrom. Dealt with it must be, in the interests of the vast population of these provinces and their descendants, whose well-being for all time depends upon our treatment of it. The evil fortunately is still but in its infancy, and it must be dealt with comprehensively and finally. It is to the land *here* as well as in every other province of the empire that we are bound primarily to look for the expenses of the State. We do not advocate a breach of faith with the Zemindars. A careful study of the question has satisfied us that the claims which they prefer will not bear examination before a competent tribunal. We are satisfied that their claims cannot be maintained, while they are fatal to the well-being of the provinces. Observe this single fact: The settlement, it is admitted, has conferred enormous wealth upon the Zemindar, and the annual payment of the *khirauj*, it is admitted, does not fall upon him but upon the cultivator. And in these

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circumstances the Zemindar declares that it is breach of faith with him for the State to tax the property which has accrued to him under the settlement. He declares that the commutation of the claim to the *khirauj* which was made with so little skill as to leave the ryot wholly at his mercy, has set him free from all liability to income or property tax! These claims affect so vitally the people that they must be met decisively. The Zemindar of these provinces, who but a few years since bought perhaps at auction an interest in this unfortunate Settlement, claims by virtue of it immunities which not the most ancient freeholder in England would venture to prefer. Has the Cornwallis Settlement conferred upon the Zemindar the rights and immunities to which he lays claim? We are satisfied that it has not.

We shall not leave this subject without venturing one more word upon it. Had a settlement of this order been possible in England and become a fact there, it would long since have been subjected, in the interests of the people, to a jealous scrutiny from its very foundations. We cannot divest ourselves of the belief that the settlement is null and void *ab initio*. The East India Company, as is well known, simply administered these territories in trust for the Crown under Act of Parliament, and we have a strong belief that the settlement would be found upon examination to have been *ultra vires* a measure beyond the powers conferred upon the Company. It would be a happy circumstance for the people of these provinces—Zemindars as well as ryots—should the fact prove to be so. It is to the true interest of no class that the Zemindar's claims should be established—and, should the issue of the inquiry be that his claims are irrefragable, the future of these territories is shrouded in the gloom of an irreparable injustice. Should the Zemindar's claims be established, *all expenditure upon public works in the provinces must be permanently abandoned*, and the task of its improvement be left to a body of men who have shown but too conclusively that they feel neither interest nor responsibility of any kind in the matter. How can the State continue to construct from the Imperial treasury railways at a cost of £20,000 a mile simply to increase ten-fold the value of the lands through which they pass, while the owners of this property, the only wealthy class in the country, are held to be permanently exempted from taxation?

In a judgment delivered a few weeks ago in the High Court of Bombay by Mr. Justice Melville, the Judge laid down the rule of English law that "a grant from the Crown is construed "most strictly against the grantee and most "beneficially for the Crown, so that nothing will "pass to the grantee but by clear and express "words." In considering the question whether the rule that a revenue grant must be construed strictly against the grantee is in "accordance with justice, equity, and conscience," Mr. Melville said:—

"I think that it is so in the highest degree. "In England, the rule doubtless had its origin in "the reverence of the Court for the person and "prerogative of the king; but I prefer to base it "on a yet higher principle, and to consider it "only in its bearing upon the public good. 'No "man made the land or trees which naturally you "grow thereon. They are the original inherit- "ance of the whole species.' The king possesses "them only as the representative and trustee of "the people. He may be vested with power to "alienate the property of the people, and there "may be circumstances which justify him in "doing so. Public services may be rewarded by "public gifts. But any such alienation is a loss "to the community, and the public good requires "that it should be jealously watched and res- "tricted. If it has been made, it must stand good "even though it be an injury to the community "for all time, *but it is not to be presumed that it* "*has been made*, nor is to be allowed out of any "feeling of indulgence for the individual. On the "contrary, it should be sternly withheld, unless it "has been expressly granted."

The question—What did the Settlement really confer upon the Zemindar?—ought to have been argued and authoritatively settled long since. Our contemporaries cannot do better than keep the question before the public mind and insist upon its being once for all settled.—*Indian Economist, 10th June* 1870.

ACT OF THE GOVERNMENT OF INDIA.

Act No. X of 1870.

THE LAND ACQUISITION ACT, 1870.

An Act for the acquisition of land for public purposes and for Companies.

Preamble. Whereas it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

PART I.

Preliminary.

Short title. 1. This Act may be called "The Land Acquisition Act, 1870:"

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force on the first day of June 1870.

Repeal of Acts. 2. On and from such day Act No. VI. of 1857 (*for the acquisition of land for public purposes*), Act No. II. of 1861 (*to amend Act No. VI. of* 1857), and Act No. XXII. of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken*) shall be repealed.

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All references made to any of the said Acts in subsequent Acts, orders, or contracts shall be read as if made to this Act.

Interpretation clause.

3. In this Act—

"Land."

The expression "land" includes benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth.

"Persons interested."

The expression "person interested" includes all persons claming an interest in compensation to be made on account of the acquisition of land under this Act.

"Collector."

The expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the local Government to perform the functions of a Collector under this Act:

"Court."

The expression "Court" means in the Regulation Provinces, British Burmah, and Sindh, a principal Civil Court of original jurisdiction, and in the Non-Regulation Provinces, other than British Burmah and Sindh, the Court of a Commissioner of a Division,

unless, when the local Government has appointed, (as it is hereby empowered to do,) either specially for any case, or generally within any specified local limits, a Judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer:

"Company."

The expression "Company" means a Company registered under the Indian Companies' Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent;

"Entitled to act."

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided, (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

Acquisition.

Preliminary Investigation.

Power to enter and survey.

4. Whenever it appears to the local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local *Gazette*, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

Power to mark out line.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries, and line by placing marks and cutting trenches;

Power to clear land.

and where otherwise the survey cannot be completed and the levels taken, and the boundaries and line marked, to cut down and clean away any part of any standing crop, fence, or jungle.

Previous notice of entry.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for damage.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

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Declaration of intended acquisition.

Declaration that land is required for a public purpose.

6. Subject to the provisions of Part VII. of this Act, whenever it appears to the local Government that any particular land is needed for a public purpose or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some Municipal Fund, or by a Company.

Contents of declaration.

The declaration shall be published in the local Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

Declaration to be evidence.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the local Government may acquire the land in manner hereinafter appearing.

After declaration, Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the local Government, or some officer authorized by the local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

Land to be marked out and measured.

Plan.

8. The Collector shall thereupon cause the land (unless it has been already marked out under Section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

Notice to persons interested.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Contents of notice.

Such notice shall state the particulars of the land so needed and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned, (such time not being earlier than fifteen days after the date of publication of the notice,) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

Notice to occupiers.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the Revenue district in which the land is situate.

In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post.

Power to require statements as to names and interests.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Persons required to make statements to be deemed legally bound to do so.

Every person required to make or deliver a statement under this section or Section 9 shall be deemed to be legally bound to do so within the meaning of Sections 175 and 176 of the Indian Penal Code.

Inquiry into value and claims.

Inquiry into value and amount of compensation.

Tender.

11. On the day so fixed, the Collector shall proceed to inquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Power to summon witnesses.

For the purpose of such inquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production

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of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

Postponement of inquiry.

12. The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the inquiry to a day to be fixed by him.

Matters to be considered and matters to be neglected.

13. In determining the amount of compensation, the Collector shall take into consideration the matter mentioned in Section 24, and shall not take into consideration any of the matters mentioned in Section 25.

Award by Collector.

Award in case of agreement as to compensation.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Award to be filed and to be evidence.

Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Reference where no claimant attends, or if Collector and persons interested cannot agree.

15. When the Collector proceeds to make the inquiry as aforesaid, whether on the day originally fixed for the inquiry or on the day to which it may have been postponed,

if no claimant attends,

or if the Collector considers that further inquiry as to the nature of the claim ought to be made by the Court,

or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

or if upon the said inquiry any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking possession.

Power to take possession.

16. When the Collector has made an award under Section 14, or a reference to the Court under Section 15, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all incumbrances.

Power to take possession in cases of urgency.

17. In cases of urgency, whenever the local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of Section 9, take possession of any waste or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government free from all incumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and, in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

Collector's statement on reference to Court.

18. In making a reference under Section 15, the Collector shall state, for the information of the Court, in writing under his hand—

(*a*) the situation and extent of the land needed;

(*b*) the names of the persons whom he has reason to think interested in such land;

(*c*) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, the amount of compensation tendered for the land under Section 11, or, if no claimant has attended pursuant to the notice mentioned in Section 9, the amount of compensation which the Collector is willing to give to the persons interested, and

(*d*) the grounds on which the amount of compensation was determined.

Service of notice.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under Section 9) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the Collector and each of such persons requiring them to appoint on or before

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a day to be therein mentioned two qualified assessors (one to be nominated by the Collector and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in Section 9, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

Power to appoint an assessor.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

Determination of amount.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

Appointment of new assessor.

22. If, before such amount is determined, any of the assessors dies or desires to be discharged, or refuses, or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable, were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Powers of new assessor.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing, or neglecting, or becoming incapable.

Proceedings to be in open Court.

23. Every proceeding under Section 21 shall take place in open Court, and all persons entitled to practice in any Civil Court shall be entitled to appear, plead, and act, or to appear and act (as the case may be) in such proceeding.

Matters to be considered in determining compensation.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

1*st*, the market-value, at the time of awarding compensation, of such land;

2*ndly*, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land;

3*rdly*, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings; and

4*thly*, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Matters to be neglected in determining compensation.

25. But the Judge or assessors shall not take into consideration—

1*st*, the degree of urgency which has led to the acquisition;

2*ndly*, any disinclination of the person interested to part with the land acquired;

3*rdly*, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

4*thly*, any damage which, after the time of awarding compensation, is likely to be caused by, or in consequence of, the use to which the land acquired will be put;

5*thly*, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

6*thly*, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put; or

7*thly*, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

Rules as to amount of compensation.

26. Where the person interested has made a claim to compensation, pursuant to any notice mentioned in Section 9 or in Section 19, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under Section 11.

Where the person interested has refused to make such claim, or has omitted, without sufficient reason, (to be allowed by the Judge,)

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to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

Record of assessors' opinions.

27. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Judge.

Difference on questions of law.

28. In case of a difference of opinion between the Judge and assessors or any of them upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

Agreement as to amount of compensation.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

Difference as to the amount of compensation.

30. In case of difference of opinion between the Judge and both of the assessors as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under Section 35.

Assessors' fees.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed 500 rupees.

Such fee shall be deemed to be costs in the proceeding.

Costs of proceedings taken by order of Court.

32. The costs of all proceedings taken under this part by order of the Court shall, in the first instance, be paid by the Collector.

Party to pay costs.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

Awards to be in writing.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of Section 24 and also the amounts (if any) respectively awarded under the second, third, and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

Award to state amount of costs.

It shall also state the amount of costs incurred in the proceedings under this Part and by what persons and in what proportions they are to be paid.

Recovery of costs.

The costs (if any) payable by the person interested and not deducted under Section 42 may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

Appeal from Judge's decision as to compensation.

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds 5,000 rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

Provisions of Code of Civil Procedure made applicable.

36. The following provisions of the Code of Civil Procedure—

(*a*) as to adding parties,

(*b*) as to adjournment,

(*c*) as to death, marriage, and bankruptcy or insolvency of parties,

(*d*) as to summoning witnesses and their attendance,

(*e*) as to examination of parties and witnesses,

(*f*) as to production of documents, and

(*g*) as to Commissions to examine absent witnesses and to make local inquiries,

shall apply, so far as may be, to proceedings before the Court.

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PART IV.

Apportionment of Compensation.

37. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specified.

38. When the amount of compensation has been settled under Section 14, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

Dispute as to apportionment.

39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under Section 38, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

Determination of proportions.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

PART V.

Payment.

40. Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under Section 39, according to the decision on such appeal:

Payment of compensation to whom made.

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

Proviso.

41. When the amount of the compensation has been settled under Section 14, if the persons interested shall so desire, the Collector shall, on the making of the said award, pay the amount of such compensation and take possession of the land:

Payment on making award by Collector.

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

42. In addition to the amount of any compensation awarded under Part II. or Part III. of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay 15 per centum on the market value mentioned in Section 24.

Percentage on market value.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession:

Payment with interest.

Provided that the costs, if any, payable to the Collector by the person interested shall be deducted from such amount and percentage.

Provided that, in cases where the decision of the Court under Part III. or Part IV. of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

Time of payment in appealable cases.

PART VI.

Temporary occupation of Land.

43. Subject to the provisions of Part VII. of this Act, whenever it appears to the local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

Temporary occupation of waste or arable land.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

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Difference as to compensation.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Power to enter and take possession.

44. On payment of such compensation,

or on executing such agreement,

or on making a reference under Section 43,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

Restoration of land taken.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Difference as to condition of land.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under Section 43, the Judge sitting alone shall decide the difference referred.

PART VII.

Acquisition of land for Companies.

Company may be authorized to enter and survey.

46. Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, the local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by Section 4.

Construction of Sections 4 and 5.

In every such case Section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted, and Section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

Consent of local Government to acquisition.

Execution of agreement.

47. The provisions of Section 6 to Section 45 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

Previous inquiry.

48. Such consent shall not be given unless the local Government be satisfied by an inquiry held as hereinafter provided—

(1.) That such acquisition is needed for the construction of some work, and

(2.) That such work is likely to prove useful to the public.

Such inquiry shall be held by such officer and at such time and place as the local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

Agreement with Secretary of State in Council.

49. Such officer shall report to the local Government the result of the inquiry, and, if the local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council providing to the satisfaction of the local Government for the following matters, namely:—

(1.) The payment to Government of the cost of the acquisition;

(2.) The transfer, on such payment, of the land to the Company;

(3.) The terms on which the land shall be held by the Company;

(4.) The time within which, and the conditions on which, the work shall be executed and maintained; and

(5.) The terms on which the public shall be entitled to use the work.

Publication of agreement.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India* and also in the local Official *Gazette*, and

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shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

PART VIII.

Miscellaneous.

Service of notice.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under Section 4 by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

Obstruction to survey, &c. Filling trenches. Destroying land-marks.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by Section 4 or Section 8, or wilfully fills up, destroys, damages, or displaces any trench or mark made under Section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding 50 rupees, or to both.

Magistrate to enforce surrender.

53. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Government not bound to complete acquisition.

54. Except in the case provided for in Section 44, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Compensation when acquisition is not completed.

But whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under Section 4 or Section 8 and not already paid for under Section 5, and shall pay such amount to the person injured.

Part of house or building not to be taken.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired.

Payment of Collector's charges by Municipal Body or Company.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from, or by, such Fund or Company.

Exemption from stamp-duty and fees.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Bar of suits to set aside awards under Act.

58. No suit shall be brought to set aside an award under this Act.

Limitation of suits for anything done in pursuance of Act.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

Power to make rules.

59. The local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

Publication of rules.

All such rules, alterations, and additions shall, when sanctioned by the Governor-General in Council, be published in the local Official *Gazette*, and shall thereupon have the force of law.

(Signed) WHITLEY STOKES,
Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,
Chief Secretary.

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THE

MADRAS REVENUE REGISTER.

No. 8.] MADRAS:—MONDAY, AUGUST 15, 1870. [Vol. IV.

FINANCIAL ECONOMY.

Whatever may be the prevailing notions on the great questions of financial economy in the Council Chamber of our Imperial Government in Bengal, whether steaming within the delta of the Ganges, or luxuriating among the rhododendrons on the Himalayas, there is now no doubt that British doggedness and the mistaken maxim of "*whatever is is right*" are the predominant principles brought to bear on Indian finance in the imposing fabric, which, in lieu of the exploded structure in Leadenhall Street, has recently been raised on the confines of old Broad Sanctuary in historic Westminster. We are not surprised that a much over-rated Indian statesman like Lord Lawrence, who rose to eminence on the hidden laurels of his able lieutenants, and under whose disappointing rule the iniquitous tax on justice spread its baleful and poisonous breath through the land, should cordially approve of the continued imposition of the Income-tax and the erection of palatial barracks to be paid for by a war-tax when there is no war; but we wonder to find, making every allowance for highland hard-headedness in the descendant of Macallum Mohr, that an English statesman, not trammelled by local prejudices, should vindicate the continuance of an imposition which he himself acknowledges to be an imposition, and should even advocate its becoming a permanent institution of the country, provided it be "kept within reasonable limits." Our astonishment and disappointment can only be all the greater when the descendant of the celebrated Cecil, Lord High Treasurer of glorious Elizabeth of England, calmly views our Indian finance as satisfactory on the whole, even while he laments its chronic defects of uncertainty; making no demur whatever to unjustifiable impositions at a time when amateur financiers have at last succeeded in blundering through their difficulties, and have finally discovered that, so far from there being any deficit, there is actually a substantial surplus in the Imperial revenues. One would have thought that, on the discovery of the real state of affairs, a Government, claiming for itself the characteristics of enlightenment, would proceed at once to abrogate measures, well known to be utterly obnoxious and unjustifiable, so soon as the unworthy pretext of their absolute necessity was ascertained to have no longer any foundation. If the voice of public opinion had the least weight with our rulers, the Income-tax, extremely partial in its application and demoralizing in its working, would be numbered with the things of the past, and taxation of justice would be reduced to the only limits within which it is at all defencible, namely, that the suitor should contri-

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bute his quota to the maintenance of an establishment, which it is the first duty of every civilized State to maintain for the public good, whether the suitor contributes any share of the expense or not. This would be the course of a truthful and honest Government, actuated by purely English principles of action; but we are afraid, taking events as they happen, that we must not hope for British ideas "*pur et simple*" being the all-prevailing ingredients in Indian Statecraft. We are beginning to think that to expect such a state of purity of action in India is quite Utopian; and that, just as the bare atmosphere of India, with rare and truly honourable exceptions, seems to un-English an Englishman, so must the conservatism of Mogul avarice need infect the dealings of the State with its subjects, in no way responsible for the alarming but really delusive stages of official impecuniosity. Thus, even when, in his long-expected Financial Statement, his grace the Duke of Argyll announced in the House of Lords that the surplus of 1869-70 would amount to 14 lacs of rupees, or £140,000 sterling, he nevertheless declared that "he could not see why the Income-tax should not be a permanent institution in Indian finance when kept within reasonable limits." And this, in spite of the oft-repeated remonstrances from independent quarters that the tax is highly obnoxious, unequal in its incidence, and utterly unsuited to the circumstances and people of the country. An income-tax, even if it were not so unsuited to this country as it really is, could only be justified on the ground of absolute necessity; but here, we have the real ruler of this great empire declaring that he would have it for all time, even although there is an actual *bonâ fide* surplus, and although there are abundant other opportunities of equalizing income with expenditure if such be required. What is this but trifling with the splendid heritage which such men as Clive have created for the British Crown, especially at a time when the schoolmaster is abroad, and the people of the country are beginning to be conscious of a people's rights and of the fact that there are other European powers, besides the English nation, who are competent and anxious to succeed to the protectorate of a territory teeming with millions and exhaustless in resources. And there is a strange inconsistency in thus setting at defiance public opinion and the wishes of the people; for, while the powers that be do not hesitate to oppress, with a fearless hand, professional and business men and traders who earn their bread with the sweat of their brow, they shrink from calling on that portion of Her Majesty's subjects who sit at home in idleness and ease, and are best able out of their overflowing in-comings to contribute to the maintenance of the State, whose very existence is a security for the peaceful enjoyment of their immensely increased prosperity. The bugbear to support this false sentiment is respect for Lord Cornwallis' permanent settlement. "How can we," ask Calcutta and Calcutta-influenced Home politicians, "infringe a solemn treaty entered into, in our name, with the Talukdars and Zemindars of Bengal?" There is a fallacy in this proposition; but we, in our turn, would ask our rulers, "Do you now get credit with the people at large for this chivalrous sentiment and pretended fidelity to the so-called treaty, as expressive of the truthfulness of the English nation; or do you not think that your overscrupulousness is likely to be attributed to a sentiment of fear rather than a regard for even-handed justice?" Is it very unreasonable to suppose that some such reflections as these are passing in the native mind? "With the Russians treading on your toes on the other side of the Himalayas, you do not mind making exac-

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tions from peaceful business and professional men in the towns; but you are afraid honestly and fairly to call upon the Zemindars to contribute like other subjects to the exigencies of the State, lest these powerful landholders might stir up sedition in the rural and unsettled districts of the North, and make easy passages for the entrance of a dreaded neighbour!"

If the British Indian Government desires to be esteemed a just, impartial, faithful, and withal firm Government, knowing no fear on the one hand and knowing no favour on the other, the question of the permanent settlement of Bengal is a question that it should grap and discuss with courage and resolution for the great purposes of financial economy. It should not shirk this great duty which it owes to the millions committed to its rule, simply because the Zemindars choose to put an interpretation on the settlements effected with them, which such settlements cannot in reason and equity bear. We do not here advert to the difficult question, whether the legislation of one generation is so adamantine in its effect that it must bind with everlasting chains all generations to come. We confess that the question is so deep that we, for our part, hesitate to approach it; but, how great soever the depth and difficulty may be, that circumstance does not relieve our Statesmen from the duty of considering it for the good of the empire. But it seems to us that the exigencies of the day do not require that this great question should be actually dealt with at present. It appears to us to be sufficient to deal with the Zemindars of Bengal only up to our existing need. If we apprehend aright, these landholders claim, by virthe of an arrogant assumption of complete lordship of the soil, absolute immunity from all contribution whatever to the exigencies of the State, and assert that the miserable peishcush fixed by Lord Cornwallis being paid by them, they cannot be called upon to contribute in any way to funds required for public and State purposes. Thus they claim entire exemption from any income-tax whatever, from any road cess, or from any taxation for educational purposes. All these burdens are to be borne by the general public, while they are to riot in the luxuriance of their increased and increasing profits, without the shadow of the tax-gatherer crossing the threshold of their pretentious dwellings. This is very tall talking, which ought to be put down with a firm and vigorous hand, and with action at once prompt and decisive. All subjects of the realm should understand that the duty of contributing to the maintenance and efficiency of the State is a duty that lies equally on every member of the body politic; and there should be no hesitation in making these recalcitrant feudatories know that, equally with every other citizen, they must bear an income-tax if there is to be an income-tax; that, like the landholders of the other Presidencies, they must contribute funds for maintaining the communications of the country, and for elevating their fellow-subjects by means of public education. What is done in Ryotwar Madras without any imputation of breach of faith with the cultivator, may be done in the permanently settled districts of Bengal, on the principle of preserving the division of the landlord's share between the Government and the middleman according to the improved circumstances of the day. What we said in May last we repeat now, that the State has a perfect right to raise the assessment, because the original proportion, ascertained on a certain principle of calculation according to the market of the day, has been disturbed by recent advancement in the material prosperity of the country, which prosperity is not the consequence of the good management, or industry, or outlay of the middlemen themselves, but is attributable either to direct State

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intervention, or the increased advantages of higher civilization, or the improved markets of the world. With growing calls upon the State for greater expenditure to meet the increasing wants of the age, the State has a right to say to these middlemen, "When we fixed the payments to be made by you to our exchequer, we calculated the amount so payable on a certain fair proportion of the profits of the land between yourselves and us; times have now considerably changed, and the proportion is disturbed; we want more money, and you have a larger share of profits than we agreed upon; it is nothing but fair that we should restore that just proportion according to the actual profits now realized from the land."

So long as the Government turn a deaf ear to the voice of public opinion, and fail to apply the remedy which is not only feasible, but which is loudly called for in justice both to the people and country, it is simply premature to talk of initiating reforms in order to introduce the element of self-government among the community. While Bengal administrators are behind the age, we are certainly too fast in Madras to suggest self-government, even on such partial measures as a Towns' Improvement Bill and a Local Funds' Bill. The latter especially was conceived in Madras in view of the immediate abrogation of the income-tax. With the very laudable object of relieving the Imperial finances at a period of pressure, Lord Napier's Government proposed to raise local funds for purposes of public utility, such as the maintenance of roads and communications, and the diffusion of elementary education among the masses. These funds were to be administered by local committees on the principle of self-government; but, after the principle had been ventilated, a change comes over the spirit of the legislative dream, the committees are to be reduced to the position of respectable dummies, and the Collectors are to be the real administrators, albeit that they may avail themselves of the advice and experience of local committees! We are glad to see that two independent men, supported by a third, have manfully come forward to denounce this farce. In the plainest language, the Hon'ble John Bruce Norton and the Hon'ble P. Macfadyen, supported by the Hon'ble A. F. Brown, declare their opinion that, as the proposed committees are to be reduced to the merest *nominis umbræ*, it would be far better to discard them altogether, and throw the entire working on the Collectors of districts; and, what is still more worthy of notice, Mr. Norton at least does not fail to point to the real question at issue, namely, whether it is fair and proper to pass these bills into law at all, in the face of a $3\frac{1}{8}$ per cent income-tax, the present financial system, and the policy of centralization. We may safely leave the discussion of this question to the bold and experienced mind that has thus grappled with it, and content ourselves with pointing out that, while Bengal Statesmen are stumbling over the permanent settlement of Lord Cornwallis, much may still be done in Madras to relieve financial pressure, to pave the way for the entire removal of an impost that will never but be obnoxious to the feelings, and hateful in the eyes, of the general public. Discard at once and for ever the absurd notion of building palatial jails at an enormous expenditure for the luxurious comfort of the wretched felons of the country. While honest men live in miserable little huts and feed on scanty fare, do not be so absurd as to offer a tempting premium to evil-minded men to long for lofty and airy apartments, where the diet is plentiful and costs the consumer nothing. In future structures, reduce the dimensions of your princely barracks to decent and habitable quarters; the men who won Plassey, and fought the numerous

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and bloody battles which added this priceless gem to the Crown of England, lived and flourished in plain and inexpensive buildings, not caring for outward ornamentation and imposing loftiness and breadth of design, so long as they had sufficient air to breathe and a comfortable bed on which to stretch their wearied limbs. Lop off the overgrown excrescences of your Police establishment, often a curse rather than a safeguard to the people, and revert to the former system of guarding your treasuries by detachments of regular and properly trained sepoys. Keep down as much as possible the number of your so-called Staff Corps Officers who draw their pay from the public exchequer and do nothing for it in return: this would be more statesman-like than to abolish the post of an office peon on 7 rupees here, or dock a poor clerk of 10 rupees of his small pay there. Finally, reduce your Public Works agency to a purely professional and scientific body for designing, and estimating for, requisite undertakings, and supervising or executing all the larger and more difficult irrigation works, roads, and bridges; and give back all the minor irrigation and road works of a district to the Revenue officers, who will know how to avail themselves of the *kudimaramut*, or accustomed village labour of the country. Much may be done in this way to keep expenditure within income, with a margin of saving, too, for extraordinary occasions. Many men who thoroughly know the country, especially among our native fellow-citizens, are confident that these measures of reform are perfectly practicable, without in any way jeopardising the efficiency of the administration. There would then be no excuse for an income-tax, and the tax on justice could easily be reduced to at least reasonable proportions. And while our Government are employed, as they now are, in increasing the resources of the State by revising the assessments of the country, and, in pursuance of their object, will also address themselves to the other reforms that are considered to be still open to them, the impervious administrators of Bengal may be moved by this spirit of earnestness to follow the example of the sister Presidencies, and thereby afford the Imperial Government a full and complete opportunity of adopting a wiser system of Financial Economy than the extremely imperfect one, which accident, the course of events, and obstinacy in certain quarters, have combined to force upon the empire.

THE SEVEN PAGODAS—II.

In our notice, in June last, of Captain Carr's edition of the papers contributed by different writers on the monolithic temples and sculptures known as "The Seven Pagodas," a few miles to the south of Madras, we closed with the learned account contributed by Dr. Babington, Secretary of the Royal Asiatic Society. We now resume our notice of Captain Carr's collection with the next paper in the series, the joint production of the late Lieutenant Braddock, the Rev. W. Taylor, and Sir Walter Elliot, the whole being arranged and communicated to the *Madras Journal of Literature and Science* by the Rev. G. W. Mahon, Garrison Chaplain, Fort St. George. Mr. Mahon introduces this joint contribution with a feeling notice of the sudden death of Lieutenant Braddock, and then proceeds to review the researches of Dr. Babington. The majority of the sculptures were not considered by Mr. Mahon to be of any great antiquity, considering their freshness and that the subjects they represented were principally derived from the Mahabharata. This celebrated poem denotes the prevalence of the Brahminical rather than the Jain religion, while the fact that the inscriptions are

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principally in Sanscrit tends to strengthen this opinion. Mr. Mahon, however, referred the remains at Saluvan Kuppam (two miles to the north of the Seven Pagodas), the Rathas, and some of the other sculptures, to a much earlier period than the majority which we have mentioned. The remainder of Mr. Mahon's introductory paper is devoted to an interesting catalogue or notice of similar works of art in other parts of the world, more especially those in Egypt and the western portion of Asia, near Beirout, Sinai, Persia, and Bagistan. The last-mentioned is supposed to have been made by the orders of the great Queen Semiramis, who flourished more than eight hundred years before the Christian era. Lieutenant Braddock's pleasing little paper commences in the usual manner of describing the pagodas, stones, and sculptures. Indeed, on a subject already so threadbare as the general outward appearance of these same sculptures, it is useless to expect much originality; we must confess, therefore, that we were somewhat glad when we were permitted to leave the well-beaten track of description to wander awhile in the more interesting fields of Hindu mythology. Our author gives us various legends connected with Ganesa, the "god of prudence and policy; the reputed eldest son of Siva and Parvati." He is represented with the head of an elephant, as a symbol of his wisdom, and is worshipped by the Hindus at the commencement of any business or undertaking. This is comparatively a tolerably rational account of a heathen deity, but some of the succeeding stories are full of the wildest absurdities. Passing on from the Ganesa temple and its legends, Lieutenant Braddock gives us a story explanatory of the *Vâmana Avatára*, or the fifth incarnation of Vishnu, a pictorial illustration of which is to be found in Plate VI of Dr. Babington's series. A prince named Mahabah, being unduly exalted by prosperity, neglected his religious duties, and Vishnu to punish him appeared in the form of a dwarf, and humbly begged the potentate to give him but so much of his dominions as he could cover *in three steps*. This the prince readily granted, only urging him to ask some gift more worthy of a great monarch. The diminutive brahmin, however, expressed himself well content with what he had already desired. The monarch then taking some water in his hand proceeded to pour it on the head of the dwarf in sign of ratification; great was his amazement to see the insignificant beggar grow to such dimensions that he filled heaven and earth. With two gigantic strides he dispossessed the discomfited monarch of heaven and earth: he was, however, magnanimous, and permited him to retain the dominion of a lower sphere called Patala, said to be inhabited by serpents. Mr. Braddock relates many more interesting legends, and, in fact, tells us more of the mythological bearing of the sculptures than any previous writer; but we should extend our notice of the Seven Pagodas to an abnormal length, did we attempt to linger longer on this part of the subject. A small etching of the Rathas shows that Lieutenant Braddock understood how to use his pen in more ways than one, for, though the touches are few, they are well executed, and convey an idea of freedom and power often wanting in more elaborately finished drawings. To this paper are appended some remarks by the Rev. William Taylor. First, adverting to the name of the spot, Mr. Taylor seems to incline to the opinion that it was *Mamallapuram*, and that it was possibly founded by some junior offshoot of the Malla chieftains of the Telugu country. As to the probable age of the sculptures Mr. Taylor argues that it cannot be so great as some authors imagined. He

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assigns three reasons as the grounds of this belief;—*first*, that the subjects of the sculptures were drawn from the poem called Mahabharata, and the language employed was Sanscrit, both circumstances pointing to a Brahminical origin; *second*, before the time of Kulottunga Chola and his son Adondai, who appears to have lived about the seventh century of our era, the tract of country between the Palar and Pennair, extending to the ghauts, was inhabited by a semi-civilized race of Jains; it was in the times of Adondai that the Brahmins from the north began to colonize this district, and later than this Vellore was founded by a chieftain of the Malla family; from all this Mr. Taylor was led to refer the founding of Mamallapuram to some other chieftain of this family; *third*, the inscriptions, notwithstanding their exposed position, are too fresh and legible to point to a remote origin, none having been found legible in any part of India of a well-ascertained date older than the tenth century. Indeed, Mr. Taylor hesitates to assign to them an age greater than from three to five hundred years. As to the origin of the place and its sculptures, Mr. Taylor appears to think they may be attributed to some conqueror from *Karnataka désa* proper; that the place first colonized by an inferior clan was afterwards overwhelmed by the conquerors Krishna-raya and Achyuta-raya of Vijayanagram. Mr. Taylor closes his remarks by some strictures on the results of Dr. Babington's labours. We are not at all prepared to choose between our differing philosophers, but at the same time think that Mr. Taylor might have given us some more lucid explanation of his reasons for dissenting from the opinions of Dr. Babington than he has done.

In his short supplemental paper Sir Walter Elliot speaks of some sculptures and inscriptions at Saluvan Kuppam, and furnishes some copies and also translations of these inscriptions. The fifth paper of the series is also contributed by Sir Walter Elliot, having first appeared in the *Madras Journal of Literature and Science.* Having commented on the historical bearing of the inscriptions, Sir Walter comes to the following conclusions—*first*, that the era of the oldest Tamil inscriptions may be referred to the latter part of the eleventh century, and the inscription on the rock at Saluvan Kuppam to the beginning of the twelfth century; *second*, that, at the time these inscriptions were made, the Saiva creed had given place to the more recent Vaishnava faith; and *third*, that Mamallapuram had another name, *i. e.*, *Jananthapuram.*

The sixth and last paper is one that afforded us most genuine pleasure in its perusal. Its author, C. Gubbins, Esq., B. C. S., seems to have brought to his task a philosophical mind, classical knowledge, and a real interest in his work. This paper is taken from the Journal of the Asiatic Society of Bengal, Vol. XXII, 1853. One of the peculiarities of the locality that seems to have struck Mr. Gubbins was the curious character of the rocks themselves, and the facility with which they split into great blocks with an apparently plane surface. In a very interesting note, the editor here mentions the long celebrated excellence of Indian steel, which he thinks may have even been employed by the ancient Egyptians for their famous architectures. He further states that "Quintus Curtius informs us that Porus presented Alexander with a quantity of steel as one of the most acceptable and valuable gifts India could offer." The editor, too, as well as Mr. Gubbins, remarks on the peculiarity of this same granite, which splits spontaneously in a concentric manner. Thus, says he, was formed the globular mass of rock, popularly supposed to be a ball of butter petrified by Krishna, the god of milkmaids. Thus, too,

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may have been caused the strange fissure in the monolith pagoda described by Mr. Chambers in the first of these papers and referred by him to an earthquake. This same peculiarity of the granite will account for the appearance of ruined domes presented by the rocks and boulders around the Seven Pagodas; the outer surface peeling off in a conchoidal manner under the influence of the weather and sea-air, leaving the remainder rounded and dome-like. Mr. Gubbins, in mentioning the general resemblance borne by the Seven Pagodas to Ellora and Elephanta, points out one singular point of similarity. In both cases the artists have left their work unfinished as though suddenly diverted from it, or as if it had been undertaken mainly to afford them temporary employment, and was then cast aside unfinished when the necessity for it ceased. A fact which greatly supports this general resemblance is the recurrence at Ellora and Mahabalipuram of an emaciated figure apparently beseeching aid from some one in authority. We cannot but think that Mr. Gubbins' explanation of these strange figures is at least reasonable. He supposes that during one of the dreadful famines, which frequently recur in India, some chief wishing to help, without pauperizing, his people, set them to execute these enormous public works to gain a livelihood. This, too, would account for their unfinished condition; for, when the scarcity and famine passed away, the people would naturally revert to their ordinary occupations, and the vast designs commenced would be left unfinished. Another possible explanation suggested by Mr. Gubbins is that a body of artificers, driven from their northern home by the cruelty or caprice of their ruler, sought refuge in this solitary spot, and there worked till recalled by the altered conduct of their natural sovereign. Another explanation of the unfinished state of the sculptures, temples, &c., is the possibly sudden death of the prince who designed the buildings and employed the workmen. Mr. Gubbins proceeds to describe the monoliths, sculptures, &c.; but, as we have gone over that ground before, it is needless to follow him step by step. We must not, however, omit to notice the closing portion of the paper, where the writer expresses his belief in the very great antiquity of the Seven Pagodas. In this, it will be seen that he entirely differs from the Rev. W. Taylor. He thinks it was probably the *entrepôt* of eastern and western commerce in far off classical days; when, he says, on the authority of Gibbon, fleets used to come once a year, borne along by the breezes of the western monsoon from *Myas Hormas*, an Egyptian port on the Red Sea, to some part of Southern India. At that time in the year, the ports of the Western Coast were unsafe, and Ceylon had no towns of any importance or commerce, so Mr. Gubbins suggests that Mahabalipuram may have been the emporium. In support of this theory, he states that a short distance inland he found many ancient foundations, sufficient to prove the place to have been once large and flourishing. Again, he even broaches the idea that the salt marsh at present south of, and behind, the ruins, was formerly a part of the estuary which still exists half way between Sadras and the Seven Pagodas. If we are not mistaken, Mr. Gubbins refers to the estuary or backwater at Covelong. It formed a harbour which, he thinks, might have been deep enough, and safe enough, for the vessels of ancient times; and at that part the coast is not dangerous, the only reef being a small one off Tripalore. From all this, Mr. Gubbins supposes that "Mahabalipuram was a place of considerable commercial resort in olden days, and perhaps was one of the chief ports of Southern India—very probably the *Malearpha* of Ptolemy."

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In the appendix we find the *Sthala purana* or local legend of Mahabalipuram, with its translation. Then follows a description in Telugu by Kavali Lakshmaya, written in 1803, with its translation. This unpretending paper, we quite agree with the editor in thinking, useful and interesting. Kavali Lakshmaya confines himself simply to description, and does not indulge in any theories or explanations. He merely describes the temples, &c., and states what he believes each sculpture to represent. This paper is followed by copies and translations of some of the inscriptions; and the editor ends his labours with an excellent index, by the aid of which all the subjects mentioned in the book may be readily referred to. We cannot refrain, in concluding our notice of the Seven Pagodas, from expressing our regret and disappointment that the editor of this interesting descriptive compilation has not appended some remarks of his own on the papers we have been reading, which, from his careful study of the subject, he must be well able to do. We give him full credit for having rescued these valuable papers from oblivion, and for presenting them to the public in a pleasing and durable form. But we are sure that the value of his pains-taking labours would have been greatly increased, had he not only, to use a legal figure, marshalled his witnesses, but also summed up his evidence to a jury of his readers. He has left the public, as it were, in the position of a jury before whom several witnesses have told their varying tales, and the haranguing counsel has suddenly closed his brief, or the learned Judge has cut short his charge, without pointing out what are the essential and undeniable truths evolved, and what is mere verbiage, fringe, and ornament, that may well be cut away, in order to form an accurate judgment upon the whole of the evidence before them. At the same time we are deeply indebted to Captain Carr for his valuable labours, and we take our leave of the Seven Pagodas with very pleasant recollections of the interest we have felt in following the subject.

HIGH COURT—MADRAS.

INNES AND COLLETT, J. J.

Division of produce—Mirassidars and Poyakarries—Injunction—Evidence—Final hearing.

In a suit by certain Mirassidars to oust their poyakarry tenants on their failure to divide produce, the Civil Judge was of opinion that, as defendants had for more than a year submitted to an order of the Court passed on a prayer to restrain the defendants by an injunction from carrying off the produce, they could not afterwards adduce evidence to gainsay plaintiffs' right to share produce or his title to the lands.

HELD *that, though plaintiffs could rest their case on the evidence recorded by the Court in the proceedings on the first motion for an injunction, the defendants were not precluded from adducing further evidence at the final hearing of the suit. Suit remanded.*

R. As. Nos. 3, 5, *and* 6 *of* 1869.

Ponnappa Naicken and three others *v.* Ekambara Iyer; Mootoo Naik and four others *v.* Tirukkam Iyer; and Veerasawmy Naik and three others *v.* Veerasawmy Iyer.

THREE original suits (Nos. 22, 23, and 24 of 1865) were brought in the Civil Court of Chingleput by Ekambara Iyer, Tirukkam Iyer, and Veerasawmy Iyer, against twenty-eight defendants. The three plaintiffs were the Mirassidars of the village of Navalur, of which they severally held a one-third *pungu* (or share). The defendants were, they alleged, the poyakarries who cultivated the village for them under certain conditions. The plaintiffs sued to recover possession of their mirassi lands, also for the mélvarum, contingent charges, common merah, &c., derived from the produce of the lands, which produce the defendants had improperly and forcibly carried away, without having made a division as they were bound to do by their agreements. Plaintiffs further claimed the mesne profits of the lands from the date of their plaints to the date of the injunction issued by the Civil Court in October 1867 regarding these lands. The defendants in their reply admitted that plain-

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tiffs were the Mirassidars, and that they (defendants) and their ancestors had held the lands under them as poyakarries. Defendants did not deny having carried off the harvest as alleged by plaintiffs; but they did deny having made any agreement to cultivate the mirassi lands of the plaintiffs, and to divide their profits with them. They denied plaintiffs' right to oust them from possession of the lands; they asserted that the right of occupancy belonged exclusively to them, and added that plaintiffs' valuation of the crops they had carried off was excessive. The plaintiffs pleaded that it was not necessary for them to adduce any fresh evidence as to the agreement on the defendants' part to cultivate the lands. In the order of the Civil Court of Chingleput in January 1867 (upon Miscellaneous Petitions 533, 534, and 535 of 1866, and in Original Suits 22, 23, and 24 of 1865) it was distinctly recorded that the agreement to pay mélvarum on plaintiffs' land had been proved, and the breach of that contract by the defendants had been admitted. The Court then (January 1867) granted an injunction restraining the defendants from touching the crop at that time on the land until they had furnished Rupees 1,000 as security for the produce. This order was complied with, and the injunction removed. On the 23rd September in the same year the same three plaintiffs presented Miscellaneous Petitions 602, 603, and 604 of 1867, applying for fresh security for the coming year, or for a renewed injunction to restrain defendants. The facts of the case were again gone into. The defendants did not impugn the accuracy of the Court's former orders; but they simply declined to furnish any security, whereupon the injunction prayed for by plaintiffs was granted on the 16th October 1867. Mr. Whiteside, the Civil Judge, was of opinion that, as the defendants had so long submitted to these orders of the Court without any objection or appeal whatsoever, it was now too late for them to retract their admissions, placed on the record more than a year before, or to deny their agreement and the breach of it. They could not after so long a time propose to cite oral evidence to rebut the allegations contained in the plaint, the truth of which they had once, through their vakeels, deliberately admitted. As to the right of plaintiffs to oust defendants, the Judge held that it was a point of law not requiring proof by witnesses. He found that defendants had agreed to cultivate plaintiffs' lands on certain terms for Fusly 1274. This contract was, in fact, a lease of the lands to defendants of a temporary character. As no time was specified, it must be regarded as a lease for one year only, and the plaintiffs had the right to resume the lands and eject the defendants. Mr. Whiteside, therefore, declared the injunction of the Court, dated 16th October 1867, to be permanent, and prohibited defendants from interfering with the lands in question. Defendants were also to pay to the plaintiffs two-thirds of the sum claimed as the value of the crops carried off with proportionate costs. The Court further awarded to plaintiffs the mesne profits, valued at the rate above specified, from the date of the plaints to the date of the delivery of the lands to plaintiffs under the renewed injunction of the Court. From this decision the defendants appealed to the High Court, *inter alia,* that the statement made in the judgment about the alleged admission by the defendants' vakeels of the first and second points was not based upon any written document; that the decision passed on a summary proceeding in regard to security for the mesne profits in a suit before disposed of could not be one determining the proprietary right between the parties, and the failure to appeal from such decision could not affect the cause of the defendants; that it was admitted by the plaintiffs that these defendants had long enjoyed the litigated land from a time anterior to Fusly 1274; and that the village under litigation was enjoyed *pasungur* (jointly) and not *pungus* (shares). Mayne for appellants, Sloan for respondents.

The High Court delivered the following

Judgment:—*1st November* 1869.

We think that these cases have not been satisfactorily disposed of by the Civil Court. The plaintiff in each case was, of course, at liberty to rest his case on the evidence already recorded in the proceedings held by the Court on the first motion for an injunction, but the defendants should not have been precluded from adducing at the final hearing any further evidence if so advised. On this ground we must reverse the decrees of the Civil Court, and remand the suits for investigation upon the merits. Each party will be at liberty to produce further evidence on all recorded issues. The costs hitherto incurred in this and the lower Court will be costs in the suits.

SCOTLAND, C. J., AND COLLETT, J.

Suit for enforcing puttahs—Possession—Powers of Collector under Regulation VII of 1828—*Act VIII of* 1865.

In a suit for enforcing acceptance of puttahs, defendants set up title in a third party. The Head Assistant Collector dismissed the suit at first; but, upon the order of the Collector, he revised his judgment; and, considering the plaintiffs to be in legal possession, he decreed as sued for. The Civil Judge reversed this judg-

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ment on the ground that the plaintiffs were not in legal possession, and that the Head Assistant had no power to revise his judgment in the manner he did.

Held *that, as the plaintiffs were in possession under processes of the ordinary Civil Courts, they had a* locus standi *for suing to enforce acceptance of puttahs; that, as Section* 76 *of Act VIII of* 1865 *enacts that no judgment of a Collector shall be open to revision except by appeal to the Zillah Court, and that a Head Assistant or Subordinate Collector comes within the definition of* "Collector," *the judgment of a Head Assistant cannot be revised except by appeal to the Zillah Judge; and that the second judgment of the Head Assistant cannot be viewed as a review of his former judgment, because the power of review under Section* 58 *applies only to* ex parte *decrees.*

S. As. 207 *and* 209 *of* 1869.

Rajaram Lala *v.* C. Velakakca; and Rajaram Lala *v.* Kalyappan.

The latter of these two cases (upon which the former one depended) was first heard by the Acting Head Assistant Collector of Salem, Mr. Woodroffe, in July 1867. The plaintiffs, as holders of the Valyambat Jaghire, sued to force the defendant to accept from them a puttah for certain land situated in the village of Valyambat, and at that time in his possession. The defendant pleaded that plaintiffs were not competent to give him a puttah; that he already held one from Sitarama Lala; and that he had paid rent to Sitarama Lala since Fusly 1271. It appeared that this Sitarama Lala was the registered holder of the jaghire, and that the present plaintiffs had obtained possession of it for a term of years by a razinamah, and a precept based on it emanating from the Court of the Principal Sudr Ameen, hence the defendant's contention that plaintiffs were incompetent to grant him a puttah. Mr. Woodroffe passed an order which was, however, annulled by the Collector, who directed him to re-investigate the case and revise his decision. In September 1868 the Head Assistant passed his revised order, in which he directed the defendant to accept the puttah from, and to exchange a muchilka with, the plaintiffs. From this order the defendant appealed to the Civil Court of Salem. Mr. Chamier, the then Civil Judge, was of opinion that the first question was whether the Head Assistant had any power to revise his judgment. The Collector's order was based on Clause 3, Section 3, Regulation VII of 1828, under which Collectors had power to control the proceedings of Subordinate and Assistant Collectors, but it was to be considered whether that power was continued to them under Madras Act VIII of 1865. It was evidently the intention of the legislature to establish a class of Courts possessing independent jurisdiction invested with summary powers of procedure and able to afford immediate relief in all disputes between landlords and tenants. It seemed to Mr. Chamier that under Section 1 of the Act every officer who, for the time being, was authorized to exercise the powers of a Collector, had jurisdiction and could give effect to its provisions, and that Section 76 provided that "in proceedings under this Act no judgment of a Collector and no order passed by him after decree and relating to execution thereof should be open to revision otherwise than by appeal to the Zillah Court, except as allowed in Section 58." Mr. Chamier thought that this applied to the present case, and that the decision of the Head Assistant should not have been revised by order of the Collector. In consequence great delay had taken place in the disposal of this suit and of others dependent on it; had the appeal been direct to the Zillah Court, the case would have been disposed of before the end of 1867. The next question was whether the plaintiffs were in a position to force defendant to accept the puttah. Mr. Chamier was of opinion that plaintiffs were not in legal possession: to the institution of the suit in the Court of the Principal Sudr Ameen there was no objection, as it was an ordinary action for debt, and there was no objection to the parties compromising the suit in any manner they pleased; but, when the plaintiffs moved the Court to enforce the terms of the razinamah and give them possession of the whole jaghire, the provisions of Section 3, Regulation IV of 1831, and Regulation XXIII of 1838, deprived the Court of jurisdiction in the matter. Had Sitarama Lala, the defendant in that suit, voluntarily admitted the plaintiffs into possession in pursuance of the razinamah, the case would be different. As it was, Mr. Chamier did not think they had obtained possession by legal means, and, therefore, they could not compel defendant to accept the puttah. The Civil Judge, therefore, reversed the decision of the Revenue Court, and dismissed the plaintiffs' suit. From this decision the defendant appealed to the High Court. Srinavassa Charry for appellant; Rama Row for respondent.

The High Court delivered the following

Judgment:—15th December 1869.

In this case the plaintiffs are the actual possessors of the Valyambat Jaghire, and, as such, brought a suit before the Head Assistant Collector, under the Madras Rent Act VIII of 1865, to compel the defendant to accept a

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puttah and to execute a muchilka for the land occupied by him, being part of the plaintiffs' jaghire. The Head Assistant Collector on 2nd July 1867 dismissed the suit; but the Collector, exercising his general powers of revision under Section 3, Regulation VII of 1828, on the 31st August 1868, by a letter, set aside the Head Assistant Collector's decision, and directed him to re-investigate the case upon the merits. The Head Assistant Collector accordingly re-heard the case, and, finding that the puttah tendered was a proper one, decreed that the defendant should accept the same and execute a muchilka in exchange. The defendant then appealed to the Civil Court; and the late Civil Judge reversed the decision of the Head Assistant Collector, and dismissed the suit on the ground (first) that the Collector had no power to interfere with the Head Assistant Collector's decision, and the latter no power to review his former decision, and (secondly) that the plaintiffs were not in legal possession of the jaghire. As to the second ground of objection, we are of opinion that the view of the late Civil Judge was erroneous. The plaintiffs were in actual possession of the jaghire, and obtained such possession under the process of the ordinary Civil Courts, which is still in force; and we are clearly of opinion that a rightful possession of this nature would give a good *locus standi* in the Revenue Court, such as to justify and require the Collector to proceed to compel the tenants occupying lands to accept proper puttahs for the same. It is sufficient to found the jurisdiction of the Collector that the plaintiff is the landlord in peaceable possession, and proved *primâ facie* to be clothed with the legal right to the rents of the estate; and we see no ground for supposing that the legislature intended that it should be open to the tenant to set up against such a plaintiff the title of a third party out of possession, a course which is not reasonably required for the protection of the tenant's interests, and would be likely to result in much fraud.

The other ground of objection taken by the Civil Court is, we think, well founded. Section 3 of Regulation VII of 1828 is left unrepealed by Madras Act VIII of 1865, and Clause 3 of the section gives to the Collector the fullest powers of control and revision over the proceedings of his subordinates. But Section 76 of Madras Act VIII of 1865 enacts that, in proceedings under the Act, no judgment of a Collector shall be open to revision otherwise than by appeal to the Zillah Court; and, applying to the term "Collector" the definition of it given in Section 1 of the Act, thus includes the judgment of a Head Assistant or other subordinate Collector. It prohibits, therefore, the judgment of a Head Assistant Collector being revised otherwise than by an appeal to the Civil Court. To this extent the powers given by the Regulation appear to be restricted by the words of Section 76 of the Act; and, as we must suppose that the provisions of the Regulation were present to the mind of the legislature when framing the Act, the term "revision" seems to have been purposely used with reference to the general powers of control and revision given by the Regulation; for we need scarcely add that those general powers, save as thus expressly restricted, still remain in full force, and it would not be difficult to suggest how they might be applied in a variety of ways to the proceedings of subordinate Collectors under this very Act.

The question remains whether, though the Collector had no power to revise and set aside the judgment of the Head Assistant Collector, the subsequent judgment of the Head Assistant may not be regarded as a review of his former judgment. Section 76 contains an exception as to the revision of a judgment in favour of cases within Section 58 of the Act; but that section is limited to judgments in default or *ex parte*, and would, therefore, not include the present case. Ordinarily, where a Court has passed judgment in a suit, it has not the power to review and alter its first judgment upon the merits, unless such power has been expressly conferred upon the Court. As observed in the judgment reported in IV. Madras High Court Reports, 253, Madras Act VIII of 1865 lays down all the procedure to be observed in a suit before a Collector; and, with the exception of Section 58, there is no provision enabling a Collector to review his judgment, and the restrictive words of Section 76 itself are wide enough to include a prohibition of a review of judgment otherwise than under Section 58.

For these reasons we confirm the decree of the lower Appellate Court and dismiss this special appeal with costs.

Special Appeal No. 207 *of* 1869.

THIS case is precisely similar to Special Appeal No. 209 of 1869, and, for the reasons given in our judgment in that case, this special appeal will be dismissed with costs.

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HIGH COURT—CALCUTTA.

GLOVER, J., AND HOBHOUSE, SIR C. P., *Bart.*, J.

The Collector of Bogra (defendant) *v.* Dwarkanath Biswas and another (plaintiffs).*

Regulation V of 1799, *Section* 5—*Regulation V of* 1827, *Section* 3 — *Collector — Administrator — Tenant—Act X of* 1859.

Under the provisions of Regulation V of 1799, *Section* 5, *and Regulation V of* 1827, *Section* 3, *the Collector took charge of a sub-tenure as administrator of a deceased person to whom the sub-tenure belonged.*

HELD, *the Collector was in no sense the tenant of the superior landlord, and consequently no suit would lie against him under Act X of* 1859 *for rent alleged to be due in respect of the sub-tenure.*

Baboo *Anukul Chandra Mookerjee* for appellant.

Baboos *Bhairab Chandra Banerjee* and *Nalit Chandra Sein* for respondents.

The judgment of the Court was delivered by

HOBHOUSE, J.—The facts of this case are very simple. One Peari Mohan, the proprietor of a certain tenure, died intestate. His property came under the jurisdiction of the Civil Court under the provisions of Regulation V of 1799 and Regulation V of 1827. Under the provisions of Section 5, Regulation V of 1799, and Section 3 of Regulation V of 1827, the Collector of the district was appointed to take charge of the estate. It became then the Collector's duty to take the management of it as directed in the Regulations quoted. He did take and hold that management from August 1864 (Bhadra 1271) up to May 1868 (Jaishta 1275). During that period he collected the assets of the estate, and held them in his possession. 45 rupees of those assets, it is found by the Court below, he appropriated to the payment of Government revenue due from the estate, and the balance of the assets he paid into Court under the following circumstances.

A certain person got a decree against the estate of Peari Mohan. In execution of that decree the decree-holder attached the assets of the estate in the hands of the Collector under orders of the Court having jurisdiction to execute the decree. The Collector paid over the assets into Court in satisfaction of the decree, less the sum of 45 rupees which I have mentioned above.

Under these circumstances the plaintiff now comes into Court and avers that he is the superior landlord of the tenure which belonged to Peari Mohan, and that certain rents are due to him for that tenure from the years 1268 to 1273, (1861 to 1866,) and he claims to recover those rents from the Collector on the averment that the Collector, standing in the place of Peari Mohan, is his tenant and is liable for the said arrears.

The suit is instituted under the provisions of Act X of 1859. It is quite clear that, if any such suit could lie under the provisions of the said Act, it would, as it is admitted by the pleader for the respondent, lie only for the rents due from and after the year 1271 (1864). But further, it seems to us that the Collector in this instance cannot, in any sense, be said to have been the tenant of the plaintiff; and that as there was no jurisdiction in the Revenue Courts, nor consequently in the lower Appellate Court, to entertain this suit at all. By the provisions of Section 5, Regulation V of 1799, the Court, in the case of a person dying intestate, is authorized to appoint an administrator for the due care and management of such estate, and such administrator is to give a full and just account of all receipts and disbursements during the period of administration. By the provisions of this section the Courts were formerly entitled to appoint any person to be the administrator in question; but by Section 3, Regulation V of 1827, the power given to the Courts by the previous Regulation was so far modified, that it was declared that the Collector of land revenue should be the person to be appointed the administrator in question. When, therefore, in this instance the Collector of land revenue was appointed to be the administrator to the estate of Peari Mohan, it is obvious that he was simply an administrator responsible as such to give an account of his receipts and disbursements, and nothing more. The words of the Act imply exactly this and no more, and it would be manifestly and obviously unjust to expect anything more.

The Judge below considers that the Collector is in part liable, because, as he puts it, " having knowledge at the time that the Zemindar's rent was due," (he should perhaps on the evidence rather have said " claimed,") " the Collector ought " not, in his opinion, to have remitted all the " moneys belonging to the estate to the Civil " Court, but should have reserved enough to meet " the Zemindar's claim for rent." The Judge remarks that the fact of the Collector's reply to the Principal Sudr Ameen shows that he did keep back a sum of 45 rupees for Government revenue, and the Judge thinks that it was equally his duty to have kept back a certain other amount to meet the Zemindar's claim for rent. The answer to this seems to be that when the Collector, who after all was nothing more than the administrator, was directed by the Civil Court to pay in the moneys he had collected on account of that estate, his duty would rather seem to have been to pay in the whole he had collected and to have reserved nothing. No inference, therefore, we think can be drawn from the fact that the Collector kept back a certain sum of money, which perhaps in duty and strictness he ought not to have kept back at all. But, whether that is so or not, the fact remains that the Collector could not, in our opinion in this instance, be said to be in any sense the tenant of the plaintiff, the Zemindar; and, this being so, whether or not that Zemindar has any other remedy against the Collector, it remains at least that he has not the remedy which he has endeavoured in this suit to follow out.

We reverse the judgment of the lower Appellate Court and affirm the judgment of the first Court, dismissing the plaintiff's suit.

* Special Appeals, Nos. 555 and 775, of 1869, from the decrees of the Judge of Rajshahye, dated the 29th December 1868, reversing and modifying the decrees of the Deputy Collector of that district, dated the 30th June 1868.

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It is admitted by the pleaders in Special Appeal No. 775 of 1869 that this case must follow the decision given in Special Appeal No. 555 of 1869. This appeal No. 775 must be dismissed, and with costs; but, as the objection now taken before us in Special Appeal No. 555 was not taken before, we think that in this last-named special appeal each party must bear his own costs in all the Courts.—*18th February* 1870.—*Bengal Law Reports, Vol. IV, Part XXIII.*

NORMAN, J., OFFICIATING CHIEF JUSTICE, AND LOCH, J.

Bunwari Lal Roy (plaintiff) *v.* Mahima Chandra Knuall and others (defendants).*

Limitation—Landlord and tenant—Patni lease—Receipt of rent—Notice.

A, a Hindu, died leaving his widow, B, and his mother, C. B adopted D. C granted a patni puttah to E of certain property belonging to the estate of A. During the minority of D, B received the rent from E; and afterwards D, on attaining majority, realized rent from E by suits under Act X of 1859. *Twelve years after attaining majority D sued for cancellation of the patni lease and for obtaining khas possession of the property.* HELD *that the suit was not barred; the receipt of rent was no confirmation of the patni lease, it only created the relation of landlord and tenant.* HELD *also that the plaintiff was not entitled to khas possession before the relationship of landlord and tenant was legally determined by a reasonable notice.*

SEMBLE—*Such notice should expire at the end of the year.*

Baboos *Srinath Das* and *Bhagabutti Charan Ghose* for appellant.

Baboos *Dabendra Narayan Bose* and *Mahini Mohan Roy* for respondents.

The judgment of the Court was delivered by

NORMAN, J.—This is a suit for certain property to which the plaintiff alleges he is entitled as having descended to him from Gaur Sundar, by whose widow he was adopted. The plaintiff alleges that the property remained in the possession of his adoptive mother, Brajeswari, till the year 1273 (1866) with his permission, and that at the end of 1273 (1866) he went to take possession, but the defendant would not allow him to do so. He, therefore, sues, praying that khas possession may be given to him, and that an alleged patni puttah may be declared to be invalid. He also asks for wasilat.

The facts of the case are shortly these. Gaur Sundar died in 1240 (1833) leaving a widow, Brajeswari, and his mother, Hemlatta Chowdhrain. Brajeswari in 1252 (1845) adopted the plaintiff, who obtained his majority in 1262; or, in other words, in 1855. The present suit was brought in 1867, twelve years, or nearly twelve years, after plaintiff obtained his majority. The first point made in favour of the defendant is that the suit is barred by limitation.

Now, though the patni puttah purports to have been granted by Hemlatta Chowdhrain, the mother of Gaur Sundar, who, from the findings of the lower Courts, seems to have had no interest in the property, the rent was for many years paid by the defendant to Brajeswari, and in the years 1257, 1258, 1259, and 1260 (1850, 1851, 1852, and 1853) Brajeswari appears to have realized the rent from the defendant after the institution of proceedings under Regulation VIII of 1819. From the year 1262, (1855,) when the plaintiff obtained his majority, to the present time, the rent has been realized by proceedings under Act X of 1859; and the substantial question before us has been whether, under those circumstances, we can infer that Brajeswari, or the plaintiff, Bunwari Lal Roy, confirmed the patni puttah granted by Hemlatta Chowdhrain, or whether the right of the plaintiff to sue to declare the patni invalid is now barred by limitation.

After much consideration of the subject we have come to the conclusion that the suit to declare the patni puttah invalid is not barred.

The patni puttah, or supposed patni puttah, (for I may observe that no evidence has been given by the defendant as to its having been really executed by Hemlatta Chowdhrain,) is one granted by a person who had no title to the estate, and under whom the plaintiff does not in any way claim. The defendant has a lease by a person, not only who had no right to grant it, but who had no interest in the property, and was a stranger to it. Brajeswari, the person to whom the land belonged, received the rents year by year. It is true that, particularly after the adoption of the son, she gave receipts which treat the rent as the rent of property held in patni, and that she took proceedings as if there was a valid and subsisting patni under which she was entitled to receive the rent. It appears to us, however, that these receipts and these proceedings are merely evidence of the existence of a patni; but, when the facts are examined and it turns out that there is no patni at all, that, in fact, the relation of Zemindar and Patnidar does not exist, it comes to no more than this, that there is evidence which, if uncontradicted, might have led to the inference that the relation of Zemindar and Patnidar existed between the parties, but when the facts are ascertained we find that such is not the case. There is nothing to show that the defendant was induced in any way to alter his position or in any way prejudiced by acting upon any belief founded on the incorrect statements of Brajeswari, as expressed in some of the receipts for rent. There is no reason, therefore, why as against Brajeswari or the now plaintiff we should presume the existence of that which had no existence, namely, a valid patni lease. What, then, was the position of the defendant and Banwari Lal Roy, when represented by Brajeswari during his minority? It was simply this. The defendant was a person paying rent to Brajeswari,

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* Special Appeal, No. 1,527, of 1869, from a decree of the Subordinate Judge of Rajshahye, dated the 12th April 1869, reversing a decree of the Officiating Sudr Ameen of Pubna, dated the 31st August 1867.

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the relation of landlord and tenant existed between them, and none other. On Bunwari Lal Roy coming of age he had a right to sue and became of capacity to sue to obtain a declaration that the patni puttah was invalid, but the patni puttah acquired no validity because he did not sue to set it aside. The relation of the parties continued exactly the same as it was during the plaintiff's minority. The defendant was a person paying rent, and Bunwari Lal Roy was a person receiving it. There was nothing which could be, or was, confirmed by any act or commission of Bunwari. The patni puttah which was invalid at the beginning remained invalid down to the commencement of the suit, and it appears to us that, in respect of so much of the prayer of the plaint as prays that the patni puttah may be declared to be invalid, we may make a declaration that the patni having been granted by a person who had no interest in the estate is invalid and in no way binding upon the plaintiff, Bunwari Lal Roy.

The next question is whether the plaintiff is entitled to obtain a decree for the actual possession of the property and mesne profits. As I have said, the legal relation of the parties was that of landlord and tenant; and, if a tenant is legally in possession paying rent, whether he is in possession as a ryot or as the holder of an intermediate tenure, we think that that right of possession, which exists as long as the relationship of landlord and tenant continues, must be legally determined before it is competent to the landlord to bring a suit for possession. If a landlord sues for possession, he is bound to prove that he was entitled to actual possession before the time of the institution of the suit.

Baboo Srinath Das admits that there are many decisions in which a rule of this kind has been laid down as regards ryots. It is easy to show that that principle applies also to the cases of intermediate tenures. In the case of a ryot, if the landlord could maintain a suit for possession in the middle of a year and suddenly determine a tenancy without notice, he might sweep off the fruits of the ryot's labour and expenses for the whole year. So again, in the case of an intermediate tenure, if the landlord could come upon the land or suddenly turn out the tenant, he might do so immediately before the period for collecting the kists of rent which such tenant was collecting from his ryots, and thus deprive the tenant of the profits to which he was looking to reimburse himself for the expenses to which he had been put in paying his own rent, kist by kist, throughout the year. He could turn out his servants without notice and remove his books out of his cutcherry without giving him time to deposit them in a place of proper custody, and so cause him the greatest inconvenience. The tenant might have made advances for the improvement of the estate; by determining his tenancy without notice the landlord might deprive him of the power to recoup himself for such advances. We think that the principle which applies to the case of ryots applies also to the case of middlemen, and that the latter cannot be turned out by the Zemindar without a reasonable notice, notice which we are disposed to think should expire at the end of the year. This suit was brought without notice, and, therefore, the plaintiff, in so far as he asks for possession and wasilat, is not entitled to a decree.

As the plaintiff does not succeed upon this point, which is an essential part of this case, and as, from the peculiar character of the dealings between himself and his mother, ryots who had held under what they may have supposed to be valid leases must have been put to considerable difficulties in knowing what their rights were, we think that the plaintiff should not get his costs of this suit. Each party will bear his own costs in all the Courts. —*8th March* 1870.—*Idem.*

HIGH COURT—N. W. PROVINCES.

(*Appellate Side.*)

MORGAN, C. J., AND ROSS, J.

Lease from occupying ryot—Right of Zemindar—

The fact that a person holds under an unexpired lease granted by a mere occupancy ryot, against whom a decree of ejectment has been obtained, is of no avail to enable such person to support his possession as against the Zemindar.

Such a lease could confer no rights on the lessee which would avail against the lessor's Zemindar.

S. A. No. 834 *of* 1869.

Jafree Begum, (appellant,) *v.* Hossein Zaman Khan, (respondent).

THIS was a special appeal from the decree of Mr. J. A. Prinsep, Officiating Judge of Furruckabad, in Appeal Suit No. 147 of 1869.

Bishumber Nath, *Furreed-ood-Deen*, and *Sumeeoollah* for the appellant, the defendant.

Pearey Mohun and *Abinash Chunder* for the respondent, the plaintiff.

This was a suit for the possession of land, the Court of first instance decreeing the claim, and the lower Appellate Court confirming the decree, the question at issue being whether the Zemindar has the right to dispossess a tenant, who has obtained a lease of his land for a term from a ryot with the right of occupancy, after the right-of-occupancy ryot has himself lost his holding on failure to pay his rent.

The Court delivered the following judgment:—

The lease from Kishna, who was merely a ryot having a right of occupancy, could confer no rights on the plaintiff which would avail against Kishna's Zemindar, Nawab Jafree Begum. If the latter had recognized the lease by receiving rent from the plaintiff or by other recognition, the case might have been otherwise, but nothing of this sort has been shown. A decree of ejectment has been obtained against Kishna by his Zemindar, and has been executed, and thereby the right of occupancy has been des-

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troyed. The lessee can stand in no higher position than his lessor, and the latter could give to his lessee no right which could prejudice the Zemindar. The judgments of both Courts regard the defendant as bound by the lease; but this view cannot be supported: we must reverse the judgments. The case will be remanded to the lower Appellate Court for trial. If from any other circumstances the plaintiff's ejectment is shown to be illegal, due weight may be given to such circumstances. But we are of opinion that the fact that he held under an unexpired lease, this lease having been granted by a mere occupancy ryot against whom a decree for ejectment had been obtained, is of no avail to enable him to support his possession.

The costs of this appeal will be costs in the cause, and will be disposed of by the lower Appellate Court.—10*th January* 1870.—*N. W. Provinces High Court Reports, Vol. II, Part I.*

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

Scott and Greenway, J. J.

Suit for land held under deed of gift—Title-deed —Non-production—

Where A and B sued to recover certain malguzari lands which they alleged they had held under the Carnatic Government on a deed of gift, and that C and D had dispossessed them of these lands—

Held *that A and B's parol evidence was insufficient and unsatisfactory; that they professed to have lost their title-deed, and then wished to produce it when the case was nearly done; but that its production at that stage of the proceedings could not be allowed.*

No. 9 *of* 1811.

This suit was instituted in the Zillah Court of Trichinopoly for the recovery of malguzari land, in the village of Mooloogoody, alleged to be unjustly withheld, and the amount-value of the annual produce of the land was claimed as damages.

The Zillah Court gave judgment in favour of the plaintiffs. The defendants appealed therefrom to the Provincial Court for the Southern Division, and that Court reversed the decision of the Zillah Court, adjudging the plaintiffs in the Zillah Court to pay all costs of suit.

On appeal to the Sudr Court they observed that the decree of the Zillah Court was grounded on an admission made in the pleadings on the part of the defendants, that the plaintiffs, in the time of the Carnatic Government, had included the village of Mooloogoody in their *Danum*, and it was thence inferred that the defendants had from that period cultivated the lands under the titles of *Swami Bhogum*, *Wathovoolawady*, and *Yearoovooravalavady*, and not under any other authority. The defendants, therefore, having dispossessed the plaintiffs of the land in question, and, in contravention of Regulations XXX and XXXII of 1802, having cultivated it without exchanging either puttah or muchilkas, were declared to be responsible for the restitution of the land and the amount of damages claimed.

The Provincial Court, on the other hand, were of opinion that, as the original defendants were in actual possession of the land at the time when the suit was instituted in the Zillah Court, they ought not to have been ousted unless the other party had produced the document, usually deemed requisite to establish a right of possession, and had also satisfactorily proved the act of usurpation by the original defendants. They were of opinion that the original plaintiffs had failed in both these points, and that, therefore, they could not be considered entitled to be put in possession of lands to which they could not legally prove their claim.

That the defendants were in actual possession of the lands in dispute at the time when the cause of action arose was, the Sudr Court thought, evident from the admission made by the plaintiffs in their petition to the Zillah Court, as well as in other parts of the pleadings filed on their behalf. It appeared clearly that the cause of action arose in the attempt of the plaintiffs to plough lands, of which the defendants claimed the proprietary right, and had actually enjoyed for some time at least the right of cultivation. The statement of the case made by the plaintiffs showed that it was not usual for them to plough the lands in dispute, and their attempt to dispossess the defendants could be legally justified only by establishing a superior title.

The question for consideration, therefore, was whether the plaintiffs had established a superior title to the lands in dispute. The parol evidence which they adduced was altogether unsatisfactory, and the documents which they filed, namely, a puttah granted by the Collector a few months only before the cause of action arose and a cadjan purporting to be a swami bhogum chit executed by one of the defendants to one of the plaintiffs and another person, were, in the opinion of the Court, quite insufficient to establish the claim which the plaintiffs advanced.

In the Zillah Court the plaintiffs stated that

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they had lost the Dannaputtrum, or deed of gift, on which they grounded their claim to the village of Mooloogoody; but, in their reply filed in this Court, they mentioned the recovery of this instrument, and they prayed the Court to receive it with other documents. Under any circumstances, the production of documents at a time when the proceedings were nearly brought to a conclusion, and the weak parts of the case had been fully disclosed, must be looked upon with suspicion; but in this case, wherein the appellant so completely failed to show any title to the lands in dispute or to establish any circumstance from which such title might be inferred, the Court were of opinion that the admission of the documents in question at this stage of the proceedings would be unjustifiable. If the plaintiffs had ever held a Dannaputtrum for the lands, or if they had ever enjoyed the proprietary right of those lands, the absence of all collateral proof to those points was scarcely to be conceived. It was proper to remark that no explanation was afforded of the time when, the place where, or the manner in which, the Dannaputtrum was recovered, and no satisfactory reason was assigned for not filing the other documents in the Zillah Court.

The Court, therefore, confirmed the decree of the Provincial Court, and dismissed the appeal, the appellants paying all costs.—*Vol. I., p.* 43.

SCOTT, GREENWAY, AND STRATTON, J. J.

Pagoda—Swami bhogum—Grant of relief not sought—De novo *suit*—

Plaintiffs sued to recover balance of Swami bhogum due to a pagoda. Defendants pleaded that the mirass of the lands did not vest in pagoda, but in themselves; that they and Government jointly made an allowance to the pagoda, but that Government subsequently withdrew its share. Zillah Court dismissed suit on failure of proof; Provincial Court adjudged the mirass to vest in pagoda, and ordered the lands to be restored.

HELD *that Provincial Court had misunderstood object of suit, and had granted a relief not sought; that the suit must, therefore, be dismissed, but plaintiffs could commence a suit* de novo.

No. 11 *of* 1812.

THIS suit was instituted in the Zillah Court of Trichinopoly for the recovery of certain paddy-grain claimed as balance due on account of *swami bhogum*, for nunja mirassi lands belonging to a pagoda.

On the part of the plaintiffs it was alleged that the ancestors of the defendants held the cultivation of the lands in question, on condition of paying *swami bhogum* at the rate of 3 cullums and 7 marcals of paddy per *purray chay;* that the *swami bhogum* was fully and regularly delivered for fifty-three years, up to the year 1796 inclusive; but that from that year the defendants had delivered only 2 cullums and 2 marcals per *chay* of the stipulated *swami bhogum.* The object of the suit, therefore, was to recover the balance accruing from this short delivery for ten years, from 1797 to 1806.

On the part of five of the defendants it was alleged that the mirassi right to the lands in question was not vested in the pagoda; that they had never delivered paddy for the use of the pagoda at the rate of 3 cullums and 7 marcals per chay, but that an allowance to that extent was made for its maintenance by the Government and the inhabitants conjointly; that in the year 1796 the Government discontinued its share of the allowance in question, but as the pagoda belonged to the village, the defendants agreed to allot for its support a quantity of paddy, at the rate of 2 cullums and 2 marcals per chay, from the cultivator's share of the produce. The remaining two defendants denied that the mirassi right of the lands was vested in the pagoda, but they acknowledged that they had agreed to deliver paddy for the use of the pagoda, at the rate of 3 cullums and 7 marcals per *purray chay;* and that this allowance was continued to the year 1796, when it was reduced in consequence of a dispute in the village.

The Zillah Court dismissed the suit with costs, on the ground that the plaintiffs had failed to prove that the defendants held the lands under an agreement to pay *swami bhogum;* that the village belonged to the pagoda, or that a *swami bhogum* was payable from the lands at the rate of 3 cullums and 7 marcals per *chay.*

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One of the plaintiffs died while the suit was pending in the Zillah Court. The other plaintiffs, dissatisfied with the decision of the Zillah Judge, appealed therefrom to the Provincial Court for the Southern Division, who reversed the decision of the Zillah Court, and, adjudging the village to be a mirassi belonging to the pagoda, they ordered the restoration to the said church of the nunja lands appertaining thereto, being 96 chays, and the payment of the balance of paddy claimed by the original plaintiffs.

From this decision the respondents in the Provincial Court, with the exception of two, appealed to the Court of Sudr Udalut, who considered the Provincial Court to have misunderstood the object for which the suit was instituted. The plaintiff did not claim to be put in possession of the lands; their claim was limited to the recovery of a balance stated to be due, on an alleged *swami bhogum* agreement, under which possession of the lands was held by the defendants. Their object was to enforce the full performance of this agreement. The Provincial Court, therefore, were clearly not warranted in awarding to the appellants in that Court *possession* of the lands, inasmuch as possession was not claimed by them. The question at issue before the Provincial Court, as it had been before the Zillah Court, was simply whether the appellants were entitled to a *swami bhogum* from the land at the rate of 3 cullums and 7 marcals of paddy per *purray chay.*

Considering, as it was presumed the Provincial Court did consider, that the appellants claimed to be put in possession of the lands, they should have rejected the claim on the ground that the amount of the annual produce was not specified as prescribed by Section 3, Regulation III of 1802. If they had pursued this course they would have avoided the irregularity of decreeing away property, the value of which was not in proof before them; and, after they had ordered the execution of their decree, they would not have had to institute an inquiry, for the purpose of ascertaining whether or not an appeal from it could lie to the Court of Sudr Udalut. It was scarcely necessary to add that, as the amount of the annual produce of the land was not specified, the institution fee prescribed by Regulation V of 1808 could not have been paid; and that, as the vakeels' fees were calculated only on the value of the paddy claimed by the original plaintiffs with the amount of damages for one year, the pleaders employed in this cause did not receive the prescribed fees on the value adjudged by the decree.

But the decree, inasmuch as it regarded the fees of the pleaders, was erroneous in another respect. The paddy claimed was valued by the appellants at Rupees 1,813 and Cash 75; and the amount adjudged on the value by the decree was Rupees 1,722, Fanams 5, and Cash 30. On the amount thus disallowed the fees of the pleaders should have been paid by the appellants.

While, on the one hand, the original plaintiffs had failed to establish clearly their right to a *swami bhogum,* at the rate of 3 cullums and 7 marcals of paddy per *chay,* the evidence for the defendants, on the other hand, was not altogether consistent with the plea upon which the claim of the plaintiffs was resisted, namely, that the mirassi right of the lands was vested in them, the defendants, and not in the pagoda. The defendants, for instance, contended that the mirassi right of the lands being vested in them, their allowance of 2 cullums and 2 marcals of paddy per *chay,* for the maintenance of the pagoda, was a mere charitable contribution, and not obligatory upon them; whereas, from the evidence of their witnesses, it appeared that it was exacted from them as a *swami bhogum,* which they were bound to deliver, and, if this were the case, it was to be inferred that the proprietary right of the lands was not vested in them.

The ground upon which the claim was resisted by the defendants obviously rendered it necessary to ascertain, in the first place, where the proprietary right of the lands was vested; but, for the determination of this question, if it had been legally before the Court,

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the evidence upon the record appeared altogether insufficient.

It further appeared to the Sudr Udalut that, if the question of proprietary right were decided; if the defendants had admitted it to be vested in the pagoda, and contended that they were liable to the payment of a *swami bhogum*, at the rate of 2 cullums and 2 marcals only, instead of 3 cullums and 7 marcals as claimed by the plaintiffs, the evidence adduced would still be insufficient for the determination of the question at issue between the parties. Indeed, the Zillah Judge, by refusing to receive the village accounts, deprived the defendants of documentary evidence, which might have been conclusive on this point.

Considering, therefore, that the proceedings in the lower Courts were in many respects erroneous, and that the evidence which appeared on the record was defective and altogether unsatisfactory, the Court were of opinion that it would be conducive to the ends of justice to annul all the proceedings held in this case, allowing the original plaintiffs or their representatives to commence a suit *de novo*, if they should think proper, for the establishment of their claims upon the defendants; and the Court accordingly adjudged that the whole of the proceedings in this case be annulled, except so far as to preserve the right of the original plaintiffs or their representatives to sue the defendants for the matter at issue.

But, as possession of the lands was not claimed by the original plaintiffs, and as the Provincial Court, therefore, were not warranted in awarding such possession to them, the Court further adjudged that the original defendants or their representatives be re-placed in possession of the lands, and that the parties who held possession pursuant to the decree of the Provincial Court do account to the said defendants or their representatives for the produce of the lands from the time at which the said defendants were ousted.

The Court having annulled the proceedings of the lower Courts in this case on the ground of their irregularity, deemed it equitable that the institution fees paid by the parties in the several Courts should be returned to them, and the Court accordingly adjudged that the institution fees be returned to the respective parties by whom they were paid.—*Idem*, *p*. 58.

OFFICIAL PAPERS.

Sanitary condition of the Madras Presidency—Fusly 1278, A. D. 1868.

Proceedings of the Madras Government, Revenue Department, 9th May 1870.

Read the following letter from the Acting Secretary to the Board of Revenue, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 1st February 1870, No. 710:—

With reference to the Order of Government, dated 18th April 1868, No. 1,034, I am directed by the Board of Revenue to submit the following report on the sanitary condition of the districts of this Presidency (exclusive of the town of Madras) for Fusly 1278, together with an abstract statement showing the ratio of mortality to population.

2. The registration of births having commenced from April 1868, an abstract statement of births during the period embraced in this report is also submitted for the information of Government.

3. According to the district returns the total number of births was 440,609, being a ratio of 17·21 per mille of whole population. The ratio was highest in Tanjore and lowest in Madura, being respectively 24·04 and 11·27. The obvious inaccuracy of the returns from the latter district, as well as from Ganjam, Vizagapatam, and other zemindary districts, is no doubt attributable to the great difficulty there is in collecting statistics in permanently settled estates. A superstitious reluctance on the part of the rural population generally to give a true account of births, and the imperfect machinery in some cases for collecting reliable statistics in large towns, render the attainment of accuracy in statistics of this description a work of great difficulty. The Board have, however, reason to believe that, as the interest of the local officers in the collection of these statistics is awakened, and the fears of the people are in some measure dispelled, the difficulties are being

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gradually overcome and real improvement being made. The Board think it at present premature to discuss the results disclosed by the abstract returns of births now submitted for the first time. But the attention of Collectors is being frequently directed to this important matter.

4. The Mortuary Returns show that the total number of deaths during the fusly was 385,596, being in a proportion of 15·06 per mille of population against 13·95 in the preceding fusly. The increase indicates improved accuracy in the returns, but it is obvious that in the majority of districts the returns are still unreliable. The Board have, in their Proceedings of 25th October 1869, No. 7,908, placed before Government their views as to the machinery necessary for the accurate collection of vital statistics in this Presidency. Classified with reference to their causes, the deaths are distributed as per margin. The proportion of deaths due to each cause is also exhibited.

Cholera ...	4,490	0·01
Small-pox ...	24,070	0·94
Fever ...	1,09,105	4·26
Age ...	40,940	1·59
Other diseases ...	1,97,913	7·73
Violent causes ...	8,920	0·34

5. The number of deaths from cholera was happily very few, only 4,490 against 16,046 in Fusly 1277, and 175,645 in Fusly 1276. The prevalence of cholera to any great extent was confined to two districts, viz., Bellary and Kurnool. The rest of the Presidency may be said to have enjoyed comparative immunity from this epidemic. In Godavery and Kistna there were absolutely no cases; in Nellore, Madras, and Coimbatore, almost next to none. In some few districts the cases reported are stated to have been simple diarrhœa mistaken for cholera:—

Cholera.

	Fusly 1277.	Fusly 1278.
Ganjam	343	429
Vizagapatam	132	109
Godavery	324	...
Kistna	1,390	...
Nellore	10	6
Cuddapah	31	155
Bellary	2	1,488
Kurnool	43	1,357
Madras	63	3
North Arcot	544	113
South Arcot ...	2,343	54
Tanjore	5,647	261
Trichinopoly ...	2,928	77
Madura	388	67
Tinnevelly	104	80
Coimbatore	373	15
Salem	1,073	60
South Canara	202	137
Malabar	176	79
Total...	16,046	4,490

6. In Bellary the epidemic raged chiefly in the eastern portion of the district, and is stated to have originated with the large number of travellers by rail, who congregate and make a temporary stay in the vicinity of the stations before proceeding finally to their destination. Detached camps with conveniences for the sick were established at Bellary, Anantapore, and Ghooty with great success, in addition to the supply of medicines through the agency of the Tahsildars. At the great annual festival of Humphy, which used to be the hot-bed of the disease, not a single case occurred. The outbreak of cholera in Kurnool is not traced to any particular cause.

7. It is also worthy of note that at the places named below, where a very large concourse of people assemble from various parts of the country during the annual festivals, the absence of cholera was happily conspicuous. Stringent sanitary precautions were taken at these places, and the effect of such measures was doubtless advantageous, though it would be taking too much credit for them to suppose that they alone prevented the outbreak of the epidemic:—

Trivellore. Conjeveram.	Madras.
Combaconum. Nagore. Negapatam. Trivellore.	Tanjore.
Streerungum ...	... Trichinopoly.

8. The deaths from small-pox, though less in number compared with the preceding fusly, were still very numerous, namely, 24,070 against 33,623. In the Kistna, Nellore, Cuddapah, Bellary, and Kurnool districts they were much more numerous than in the preceding year, while a considerable decrease occurred in Godavery, Madras, North Arcot, South Arcot, Tanjore, Madura, Coimbatore, Salem, and Malabar. It is observed that in Fusly 1276 these districts enjoyed comparative immunity from this disease. The Collectors of the Kistna, Bellary, and Tanjore districts still consider the present system of vaccine operations defective and susceptible of great improvement. The Board are aware that the Superintendent-General of Vaccination is most anxiously devoting his attention to the subject, and is willing to adopt any suggestions from the District Officers for the better management of the operations of his department. It would be out of place to go into the subject further in this report, but it is receiving all due attention.

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Small-pox.

	Fusly 1277.	Fusly 1278.
Ganjam	355	338
Vizagapatam	653	556
Godavery	2,154	1,165
Kistna	1,281	1,719
Nellore	1,587	2,003
Cuddapah	966	1,606
Bellary	1,708	2,102
Kurnool	614	1,623
Madras	2,756	1,097
North Arcot	5,175	2,082
South Arcot ...	1,500	1,064
Tanjore	3,350	2,684
Trichinopoly	799	514
Madura	1,964	1,197
Tinnevelly	1,935	1,878
Coimbatore	1,056	664
Salem	1,804	852
South Canara ...	275	113
Malabar	3,691	715
Total...	33,623	23,972

9. Fever prevailed in all the districts, and the total number of deaths from this cause was nearly as large as in the preceding year. The cases were fifty per cent less in two districts, Godavery and South Canara. In the rest the number was either greater than, or nearly the same as in, the last year. The distribution of fever pills during the height of the disease in particular localities goes but a little way in checking its ravages; and, as remarked by the Board in their last report, nothing can successfully grapple with this epidemic but a well-organized agency educated on the European system of medicine. Under the recent orders of Government quinine is now offered for sale by the Revenue Officers, and it is hoped that the progress of cinchona cultivation will soon admit of other and less expensive preparations of bark being available.

Fever.

	Fusly 1277.	Fusly 1278.
Ganjam	6,038	8,222
Vizagapatam	9,398	7,250
Godavery	15,209	6,955
Kistna	3,835	2,205
Nellore	1,815	2,089
Cuddapah	5,236	9,115
Bellary	7,883	8,845
Kurnool	6,690	8,523
Madras	1,961	2,198
North Arcot	7,425	7,820
South Arcot ...	2,670	2,504
Tanjore	4,833	6,670
Trichinopoly ...	2,374	2,470
Madura	3,697	3,999
Tinnevelly	2,015	2,544
Coimbatore	2,604	3,381
Salem	4,760	7,085
South Canara	10,498	5,536
Malabar	9,563	11,269
Total...	1,05,504	1,08,680

10. The deaths from age appear to have been nearly the same number as in the preceding year, having been 40,940 against 35,788, and those ascribed to other diseases were 197,913 against 157,095.

11. Those from violent causes also show little variation from the year preceding, as will be observed from the following figures :—

Violent Causes.

	Fusly 1277.	Fusly 1278.
Accidents.		
Drowning	3,884	4,017
Snake Bite	2;048	2,310
Wild Beasts	323	234
Other accidents... ...	1,833	1,738
Suicides.		
Hanging	188	210
Drowning	253	270
Poison	35	49
Other suicides	87	92
Total...	8,651	8,920

12. The ratios of births and deaths in each district of the Presidency is given below. For the reasons already stated in paragraph 3, the Board will not discuss the apparently discordant results which these figures disclose :—

	Births.	Deaths.
Ganjam	18·96	13·17
Vizagapatam	16·52	12·68
Godavery	15·62	14·62
Kistna	19·32	15·23
Nellore	16·06	16·34
Cuddapah	13·48	17·87
Bellary	16·13	19·45
Kurnool	17·92	23·16
Madras	20·46	17·69
North Arcot	21·67	17·36
South Arcot	12·80	11·09
Tanjore	24·04	20·16
Trichinopoly	17·21	13·66
Madura	11·27	8·15
Tinnevelly	15·93	13·23
Coimbatore	14·26	11·33
Salem	15·43	12·45
South Canara	15·74	19·81
Malabar	22·17	16·60
Neilgherries	17·93	21·21

13. On the whole, Fusly 1278 may be described to have been a healthy year, and distinguished from its predecessors by a marked freedom from cholera enjoyed by the greater part of the Presidency. The prices of food-grains were moderate, and the poorer classes were exposed to little distress.

14. The last report from the districts having been received so late as November, it has not been found practicable to submit this review at an earlier date. The Board trust that future reports will be submitted at a less interval from the close of the Fusly year.

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ENCLOSURE

Abstract Statement of Deaths in the several Districts

DISTRICTS.	Population.			Mortality.		
	Males.	Females.	Total.	Males.	Females.	Total.
	No.	No.	No.	No.	No.	No.
1. Ganjam ...	650,482	585,308	1,235,790	8,826	7,453	16,279
2. Vizagapatam ...	785,623	719,422	1,505,045	10,455	8,631	19,086
3. Godavery ...	722,713	704,759	1,427,472	11,170	9,707	20,877
4. Kistna ...	664,088	632,564	1,296,652	10,350	9,398	19,748
5. Nellore ...	607,199	561,465	1,168,664	10,106	8,972	19,078
6. Cuddapah ...	597,661	547,098	1,144,759	11,665	8,802	20,467
7. Bellary ...	680,698	624,300	1,304,998	13,253	12,137	25,390
8. Kurnool ...	397,479	373,378	770,857	9,592	8,266	17,858
9. Madras ...	413,366	390,917	804,283	7,253	6,979	14,232
10. North Arcot ...	......	......	1,787,134	16,789	14,240	31,029
11. South Arcot ...	658,184	603,662	1,261,846	7,408	6,586	13,994
12. Tanjore ...	820,759	849,474	1,670,233	16,901	16,786	33,687
13. Trichinopoly ...	504,245	502,581	1,006,826	7,107	6,655	13,762
14. Madura ...	968,115	978,274	1,946,389	8,528	7,348	15,876
15. Tinnevelly ...	760,165	766,533	1,526,698	10,535	9,675	20,210
16. Coimbatore ...	705,017	688,565	1,393,582	8,606	7,178	15,784
17. Salem ...	819,218	800,015	1,619,233	10,654	9,511	20,165
18. South Canara ...	424,959	411,060	836,019	8,821	7,745	16,566
19. Malabar ...	927,144	922,527	1,849,671	17,008	13,691	30,699
20. Neilgherries ...	20,858	17,284	38,142	488	321	809
Total...	12,127,973	11,679,186	25,594,293	2,05,515	180,081	385,596

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No. 1.
of the Madras Presidency for Fusly 1278.

Details of Deaths.															
From Disease.					From Violence.									Ratio per 1,000 calculated on columns.	Remarks.
					Accidents.				Suicides.						
Cholera.	Small-pox.	Fever.	Age.	Other diseases.	Drowning.	Snake Bite.	Wild Beasts.	Other accidents.	Hanging.	Drowning.	Poison.	Other suicides.	Murders.		
No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	
429	338	8,222	730	6,316	90	44	23	64	8	2	1	...	12	13·17	
109	556	7,250	2,105	8,699	100	70	16	139	7	17	...	6	12	12·68	
...	1,165	6,955	1,294	10,967	214	120	7	93	10	37	4	6	5	14·62	
...	1,719	2,205	4,546	10,775	205	88	3	118	12	65	2	5	5	15·23	
6	2,003	2,089	2,666	11,832	291	112	14	33	6	12	1	...	13	16·34	
155	1,606	9,115	2,032	6,936	458	78	12	65	3	1	...	1	5	17·87	
1,488	2,102	8,845	1,910	10,548	255	55	3	109	13	37	3	6	16	19·45	
1,357	1,623	8,523	907	5,155	141	43	17	87	1	...	1	...	3	23·16	
3	1,097	2,198	1,541	9,249	76	52	1	6	1	1	6	1	...	17·69	The Madras District is exclusive of the town of Madras.
113	2,082	7,820	3,164	17,204	360	116	11	73	10	62	7	4	3	17·36	
54	1,064	2,504	1,762	8,152	139	187	47	66	12	...	4	...	3	11·09	
261	2,684	6,670	4,839	18,521	239	380	6	68	11	...	3	...	5	20·16	
77	514	2,470	1,722	8,595	117	116	3	130	5	3	3	2	5	13·66	
67	1,197	3,999	817	9,420	136	138	7	51	6	10	2	20	6	8·15	
80	1,878	2,544	1,509	13,736	267	65	5	85	7	2	2	22	8	13·23	
15	664	3,381	3,118	8,125	243	135	19	62	12	1	...	4	5	11·33	
60	852	7,085	1,134	10,532	248	127	14	90	10	3	...	1	9	12·45	
137	113	5,536	1,813	8,430	180	81	23	195	29	10	6	3	10	19·81	
79	715	11,269	3,283	14,494	256	303	...	200	47	7	3	11	32	16·60	
...	98	425	48	227	2	...	3	4	...	...	1	...	1	21·21	
4,490	24,070	109,105	40,940	197,913	4,017	2,310	234	1,738	210	270	49	92	158	15·06	

(Signed) A. MACGREGOR,
Acting Secretary

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ENCLOSURE No. 2.

Abstract Statement of Births in the several Districts of the Madras Presidency for Fusly 1278.

DISTRICTS.	POPULATION.			BIRTHS.			Ratio per 1,000 calculated on columns between 4 and 7.	Remarks.
	Males.	Females.	Total.	Males.	Females.	Total.		
1	2	3	4	5	6	7	8	9
Ganjam	650,482	585,308	1,235,790	12,488	10,944	23,432	18·96	
Vizagapatam	785,623	719,422	1,505,045	12,888	11,978	24,866	16·52	
Godavery	722,713	704,759	1,427,472	11,257	11,039	22,296	15·62	
Kistna	664,088	632,564	1,296,652	12,726	12,326	25,052	19·32	
Nellore	607,199	561,465	1,168,664	9,668	9,105	18,773	16·06	
Cuddapah	597,661	547,098	1,144,759	7,995	7,446	15,441	13·48	
Bellary	680,698	624,300	1,304,998	11,359	10,703	22,062	16·13	
Kurnool	397,479	373,378	770,857	7,065	6,755	13,820	17·92	
Madras	413,366	390,917	804,283	8,554	7,908	16,462	20·46	The Madras District is exclusive of the town of Madras.
North Arcot	......	......	1,787,134	20,080	18,652	38,732	21·67	
South Arcot	658,184	603,662	1,261,846	8,712	7,445	16,157	12·80	
Tanjore	820,759	849,474	1,670,233	20,664	19,498	40,162	24·04	
Trichinopoly	504,245	502,581	1,006,826	9,208	8,127	17,335	17·21	
Madura	968,115	978,274	1,946,389	11,647	10,297	21,944	11·27	
Tinnevelly	760,165	766,533	1,526,698	12,806	11,521	24,327	15·93	
Coimbatore	705,017	688,565	1,393,582	10,451	9,422	19,873	14·26	
Salem	819,218	800,015	1,619,233	12,713	12,297	25,010	15·43	
South Canara	424,959	411,060	836,019	6,801	6,355	13,156	15·74	
Malabar	927,144	922,527	1,849,671	21,275	19,750	41,025	22·17	
Neilgherries	20,858	17,284	38,142	357	327	684	17·93	
Total...	12,127,973	11,679,186	25,594,293	228,714	211,895	440,609	17·21	

(Signed) A. MACGREGOR,
Acting Secretary.

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Order thereon, 9th May 1870, No. 667.

Resolved that the foregoing report be submitted to the Right Honourable the Secretary of State for India, with reference to paragraph 4 of his despatch, dated 29th February 1868.

2. The Local Fund Bills, now under consideration in the Legislative Department, should they become law, will place the Government in a position to do much towards improving the sanitary condition of the Presidency, and will, it is hoped, enable them to take steps for training up a class of Native Medical Practitioners.

3. It is satisfactory to observe that the precautionary measures referred to in paragraphs 6 and 7 of the Board's letter were followed by such good results.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secy. to Government.

REVISION OF ASSESSMENT—MADRAS DISTRICT.

Proceedings of the Madras Government, Revenue Department, 17*th May* 1870.

Read the following letter from the Acting Director of Revenue Settlement, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated 16th May 1870, No. 685-20:—

In reply to the Proceedings of Government, dated 3rd May 1870, No. 630, I have the honour to report that I shall be able to commence settlement operations in the Sydapet Taluk on the 15th June next, subject to the consent of Government. The Board of Revenue, under whom the Tinnevelly Party are now working, have kindly spared the services of one Head Classifier, six Classifiers, and a Goomastah, the Board have also allowed me to make use of the Tinnevelly Supervisor, Iyyaviengar, who happens to be now at Madras. From the Salem Party I can send for four Classifiers, one Head Classifier, and one Goomastah, so that the Party would be as follows:—

1 Supervisor,
2 Head Classifiers,
10 Classifiers,
2 Goomastahs,

with the peons who are already attached to these employés. No Assistant Director can be spared, and "as no expenditure in excess of the Budget provision for the department can be sanctioned," I propose taking charge of the party myself after my return from Salem, about the 12th proximo. I trust the above arrangements may be approved of. The Supervisor, the Head Classifiers, and likewise some of the Classifiers whom I have now selected, all worked under me when I was Deputy Director; so I do not anticipate that the management of these tried and trained servants will detrimentally interfere with my other duties or with trips for supervision elsewhere.

2. As the Government are aware, a considerable tract of country, situated in the Ponnary Taluk, will be directly affected by the present irrigation project; and, as this taluk is well nigh completed as regards survey operations, I would suggest that this might be taken up by our department concurrently with Sydapet.

3. One main cause of delay in the settlement of these taluks is that numerous experiments as to the outturn of crops on the various soils must be made, and at present there are no crops ready for cutting. The Kar paddy crop can be tested in September and October; the dry crops in October and December; and the Sumba paddy at the end of January and during February. This unavoidably puts matters back, so that I could not give the rates reliably and thoroughly worked out before the 1st May next. An approximate set of rates for the various soils in Sydapet and Ponnary could be submitted by the 15th October next, and these would be fair data for working upon as regards returns from extended irrigation.

4. I would solicit the sanction of Government for the payment of batta to the Supervisor, who will not only be put to extra expense but will also have extra work, as I should require him both in the office and in the field. He is not, strictly speaking, entitled to batta; but I trust, as a special case, he may be allowed Rupees 1-4-0 per diem, the rate allotted to Revenue servants who receive a similar salary of Rupees 150. This item, as well as the travelling and rail charges to be disbursed to the other servants, might be met from the Budget allotments of the parties to which they respectively belong.

Order thereon, 17th May 1870, No. 729.

The Right Honourable the Governor in Council sanctions the arrangements proposed by the Acting Director of Revenue Settlement in the foregoing letter for at once undertaking the revision of the Land Revenue Settlement in the taluks of Sydapet and Ponnary, in the Madras District.

2. It is presumed, from paragraph 1 of his letter, that the Acting Director has been in communication with the Board of Revenue on the subject, and that they concur in his recommendations.

3. The extra batta to the Supervisor and the travelling and railway charges of the other servants are sanctioned as requested in the concluding paragraph of the Acting Director's letter.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secy. to Government.

VENCATAGHERRY RAJAH'S MACHINE FOR RAISING WATER.

Proceedings of the Madras Government, Revenue Department, 23*rd May* 1870.

Read the following Proceedings of the Board of Revenue, dated 25th March 1870, No. 1,953:—

Read again Board's Proceedings, dated 2nd July 1869, No. 4,728.

Read also the following letter from the Honorary Secretary, Government Experimental Farm, Madras, to the Acting Secretary to the Board of Revenue, dated 26th January 1870, No. 87.

I have the honour to acknowledge receipt of Board's Proceedings of 21st December 1869, No. 9,428, and to forward the remarks called for in paragraph 2 on the Rajah of Vencatagherry's machine for raising water.

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2. I regret the subject escaped my notice previously, as the papers were received just before I left for Oossoor in July last.

3. The machine could not be made here for treble the price estimated by the Rajah, nor do I think it could be made anywhere for the price named except by a wealthy land-owner with his own wood and workmen; nothing, moreover, is allowed for bags and ropes. The cost of two leather bags lately purchased for the Farm was Rupees 22, and the bags and ropes constantly need repair.

4. The machine is a common jim, of not very good pattern, with two leather bags attached for raising the water, called in Bengal the "Double Mhote."

5. In the Roorkee Professional Papers* on Indian engineering a full account is given in Volume I., No. II., page 172, of machines for raising water, with drawings, descriptions, tables, calculations of cost, and a comparative table of five different machines, of which the "Double Mhote" is one.

* Herewith sent, to be returned.

6. The best pump which has yet been tried at the Government Experimental Farm, Sydapet, where pecottahs, mhotes, (single and double chains), V. pumps, Norton's force pumps, and bucket pumps, have been experimented on, is the improved bucket pump, of which a full description† is given in the accompanying copy of a letter to the *Indian Economist*.

† Drawing also sent.

7. Though expensive at first, the bucket pump is very easily managed, requires almost no repair, and soon pays for the original outlay by doing more than double the work of any other pump.

Enclosure No. 1.—One copy of letter to the *Indian Economist*.

Enclosure No. 2.—One drawing.

Enclosure No. 3.—Book.

Submitted to Government with reference to Government Order, dated 13th November 1869, No. 2,957.

2. It will be observed that the Honorary Secretary of the Government Farm Committee describes the Rajah of Vencatagherry's machine for raising water, referred to in Board's Proceedings, dated 20th March 1869, No. 1,918, as a not very good pattern of a machine known in Bengal as the "Double Mhote."

3. The Rajah estimates the cost of his machine, exclusive of leather bags and ropes, at Rupees 28-2-0. Mr. Hunter Blair, however, says that it could not be made in Madras for treble that sum, and he doubts whether it could be made anywhere for that price, except by a wealthy land-owner with his own wood and workmen.

4. From the account given in the Roorkee Professional Papers, Vol. I., No. II., page 172, it appears that the "Double Mhote" is the most effective of the five machines therein described.

5. Mr. Blair, however, reports that the result of experiments made at the Government Farm with various kinds of machines for raising water, including the "Double Mhote," goes to show that the "Improved Bucket Pump" is the best. A full description and a drawing of this machine accompany his report.

Order thereon, 23rd May 1870, No. 760.

The Acting Collector of Nellore is requested to convey to the Rajah of Vencatagherry the thanks of Government for his introduction of a contrivance for raising water hitherto unknown in the Nellore District. Mr. Master will at the same time call the Rajah's attention to the remarks of the Honorary Secretary, Government Farm, on the "Bucket Pump" in paragraphs 6 and 7 of his letter, dated 26th January 1870, No. 87.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secy. to Government.

Silk weaving—Kistna District.

Proceedings of the Madras Government, Revenue Department, 24th May 1870.

Read the following Proceedings of the Board of Revenue, dated 29th April 1870, No. 2,847:—

Read the following letter from the Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 15th March 1870, No. 1,054.

In continuation of my letter, dated 25th January 1870, No. 367, regarding the state of silk manufactures in this district, I have the honour to state that the only place where silk-weaving is carried on is in Jaggayapet, a town on the frontier of the Nizam's dominions. From inquiries I am informed that the silk is all obtained in a raw state from ten villages in the Mysore territories, namely, 1, Magidi; 2, Koteru; 3, Oscotta; 4, Ramagiri; 5, Cheratamanipetta; 6, Chellakallur; 7, Kitapett; 8, Kacherla; 9, Allapuram; 10, Madura Chennapatnam; and from two villages in the Cuddapah District, 1, Kate Kabila; 2, Kadri.

2. The silkworms are said to be fed on the leaves of the (Hindustani) *Thatut*, (Telugu) *Rudrakshachettu*. They yield the cocoons in forty-five days. The raw silk is purchased by the manufacturers at Rupees 22 per five seers; it is brought to Jaggayapet, where it is reeled, and died, and woven, when it is sold at the rate of Rupees 10 a seer.

Submitted to Government in continuation of Board's Proceedings, dated 19th February 1870, No. 1,151.

Order thereon, 24th May 1870, No. 769.

Ordered to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,

Acting Under-Secy. to Govt.

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CERTIFICATES UNDER REGISTRATION ACT.

Proceedings of the Madras Government, Revenue Department, 1*st June* 1870.

Read the following papers:—

Proceedings of the Board of Revenue, dated 29th March 1870, No. 2,060.

Read the following letter from the Acting Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated Calicut, 15th February 1870, No. 65.

I have the honour to draw the attention of the Board to the proviso contained in paragraph 16, Schedule 2, Act XVIII of 1869, and to request their instructions as to whether I can appoint Tahsildars and Deputy Tahsildars to grant the required certificates. At the same time I beg to observe that the Sub-Registrars would be the best persons to grant the certificates, as the original instrument will, in almost all cases, have to be registered; and if the counterpart is presented at the same time, there will be no difficulty in endorsing the required certificate upon it.

Submitted for the orders of Government.

2. It appears to the Board that, as suggested by the Collector, it will be convenient to all parties if Sub-Registrars are authorized to grant the certificates required by Article 16, Schedule II, Act XVIII of 1869.

From the Acting Registrar-General of Assurances, Madras, to the Acting Under-Secretary to Government, Fort Saint George, dated 6th May 1870, No. 30.

In acknowledging the receipt of your docket on the Proceedings of the Board of Revenue, dated 29th March last, No. 2,060, I have the honour to state that, as observed by the Board, it will be convenient to all parties to authorize Registering Officers to grant the certificates required by Article 16, Schedule II of the General Stamp Act. It will not be sufficient, however, to authorize the Sub-Registrars only as contemplated by the Collector of Malabar and the Board. Registrars and the Registrar-General will need to be authorized as well as they have also powers of original registration under Sections 31 and 32 of Act XX of 1866.

Order thereon, 1st June 1870, No. 799.

Ordered that a copy of the Acting Registrar-General's letter be furnished to the Board of Revenue, and that they be requested to instruct the Collectors to authorize the Registrar-General, all Registrars, and Sub-Registrars, to grant the certificates required by Article 16, Schedule 2, Act XVIII of 1869.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secy. to Government.

ADVANCES TO PROPRIETORS FOR AGRICULTURAL IMPROVEMENTS.

From E. C. BAYLEY, Esq., C. S. I., Secretary to the Government of India, Home Department, to the Secretaries to the Governments of Madras, Bombay, and Bengal, Nos. 323 to 325, dated Simla, 2nd June 1870.

The Governor-General in Council has for some time past been satisfied that measures might be taken with great advantage in many parts of India for extending and improving the system of giving assistance to proprietors of land for the construction of permanent works of agricultural improvement. I am directed to request the attention of ——* to this subject, and to state that His Excellency in Council will be glad to be informed of the views of——† regarding the measures which might properly be adopted.

* *To Madras and Bombay*—His Excellency the Governor in Council.

To Bengal—His Honour the Lieutenant-Governor.

† The Government of—*Madras, Bombay, and Bengal.*

2. The Government has always, if not by extensive practice at least by its legislation, recognized the duty which in this country devolves upon it of giving advances of public money for the promotion of agricultural improvements. The system of making such advances, usually called *tuccavee*, has existed more or less in the Bengal Presidency almost from the commencement of our rule. The existing law upon the subject is contained in Regulation II of 1793, Regulation XIV of 1793, Regulation III of 1794, and Regulation VI of 1795. The security is complete, since the land on which the improvement is made is declared by the law to be responsible for the re-payment of the advances, and they may be recovered by the same processes which are applicable to the recovery of arrears of land revenue.

It appears to the Governor-General in Council that it would be desirable to consolidate and amend the existing law on this subject. The provisions of the old enactments that have been quoted are obviously incomplete, and they are in some respects hardly suited to the circumstances of the present time.

3. The system under which *tuccavee* advances for permanent improvements have been given in many parts of India is identical in principle with that which has been carried out in the United Kingdom, with admirable results, by means of the Land Improvement Acts. The Governor-General in Council believes that this principle may receive a much wider and more systematic development in India than has hitherto been given to it, and he believes that no sounder or more useful principle could be acted upon by a Government which desires to make the resources of the State available for the promotion of the wealth and improvement of the people. There is perhaps no country in the world in which the State has so immediate and direct an interest in such questions. The Government of India is not only a Government, but the chief landlord. The land revenue, which yields twenty millions of our annual income, is derived from that portion of the rent which belongs to the State, and not to individual proprietors. There can be no doubt that throughout the greater part of India every measure which can be taken for the improvement of the land and for increasing its productive powers immediately enhances the value of the property of the State, and adds ultimately to the

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public resources without the imposition of any fresh burden on any class of the community.

4. The class of works for the construction of which the assistance of the Government might properly be given to the owners and occupiers of land, would not be difficult to define. Advances of money should be usually given for that description of work only which can be designed and carried out, with a small amount of assistance, under the direction of the local proprietors themselves. These advances should not be made for great works requiring, in their design or construction, engineering skill of a high order or the employment of large bodies of labourers. Such works if undertaken by the Government must necessarily be undertaken through the Department Public Works. The works for which advances might properly be made would commonly fall into some one of the following classes :—

(1.)—Wells and other works for the storage, supply, or distribution of water for agricultural purposes, and the preparation of land for irrigation.
(2.)—Drainage.
(3.)—The re-claiming of land from rivers.
(4.)—The protection of land from floods.
(5.)—The re-claiming, clearing, and enclosing of waste lands for agricultural purposes.
(6.)—The clearing of land from stones or other obstacles to cultivation.

5. It is believed that it would not be difficult to devise and bring into operation a system under which advances of money might be made by the Government for works of this description, mainly through the agency of the District Officers of the Government and with complete security against loss, and the benefits derived from such an application of capital to the permanent improvement of the land might be of almost incalculable importance. His Excellency in Council is disposed to think that there are no objects to which a portion of the loans, which it is proposed to raise every year for reproductive works, could be more advantageously and properly devoted. Such portion of the borrowed money of the year as, in the opinion of the Government of India, could be usefully lent for such purposes, would be placed at the disposal of the local Governments. The extension of irrigation canals and the development of our railway system will necessarily stimulate agricultural industry, and the importance of facilitating to the utmost the prosecution of minor works of land improvement will, under such circumstances, be specially great.

6. It appears to the Governor-General in Council that no elaborate machinery or expensive staff of officers would be necessary for the gradual development of a system which in all essential respects has long been known to, and approved by, the people. In the existing establishments of the Revenue and Public Works Departments it is probable that we possess already in the greater part of India an organization quite sufficient for the purpose. The character of most of the works would be so simple that the Collector or District Officer on whom would fall the chief duty of making the advances and of supervising the execution of the works would find little difficulty in taking all necessary precautions to prevent the occurrence of abuses and to secure the proper application of the money to the purposes for which it was advanced.

7. It appears to the Governor-General in Council that in revising the law upon this subject some such provisions as the following might be adopted.

8. Any person desiring to make an improvement in his land of the character referred to in the fourth paragraph of this letter, would be authorized to make an application to the Collector for an advance of money to enable him to make the improvement.

The local Government, with the sanction of the Governor-General in Council, would be authorized to make rules prescribing the manner in which such applications should be made, and in which inquiries relating to applications should be conducted; for determining the conditions under which advances might be made, and under which they would be re-payable; for securing the due expenditure of the advances, the due execution, inspection, and maintenance of the work for which the advance was made; and for the keeping and auditing of accounts.

9. Advances would ordinarily be made to the landlord or to tenants whose interest in the land exceeded the term fixed for the re-payment of the advance; but they might, with the landlord's consent, be made to any tenant desirous of making an improvement on the land in his occupation.

10. On receiving an application for an advance, the Collector would make such inquiry as appeared necessary in regard to the propriety of making the advance. If the result of such inquiry should be to satisfy the Collector that the proposed improvement would increase the annual value of the land in which the improvement is to be made to an amount exceeding the sum to be charged annually upon the land for the re-payment of the advance, he would be authorized (subject to the rules referred to in paragraph 8) to grant a certificate sanctioning an advance of money for the purpose of making the improvement. The certificate would state the amount of the advance, the conditions under which it was to be made, and under which it was to be re-paid by instalments or otherwise, and it would specify the land which, in the event of the conditions not being fulfilled, would become chargeable for the re-payment of the advance.

After the certificate was granted the Collector would be authorized to make the advance.

11. The law would provide that, when any sum stated in the certificate became due, it would be recoverable from the person to whom the advance was made, or from any person who had become security for re-payment, as if it were an arrear of land revenue due by the person to whom the advance was made, or by his security. If any sum could not be so recovered, it would be recoverable as if it were an arrear of revenue due on the land specified in the certificate.

Any sums expended by the Collector in accordance with the rules referred to in paragraph 8 in making local inquiries or otherwise in carrying into effect the provisions of the law in behalf of a person applying for an advance, would be recoverable in the same manner.

12. It is hardly necessary to repeat that the present proposals refer only to advances for works

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of permanent agricultural improvement. The Governor-General in Council is aware that a vicious system formerly prevailed in some parts of India under which nominal advances called *tuccavee* were often made to liquidate balances of Government revenue and for other temporary purposes. Such advances, unless under very exceptional circumstances, were clearly incompatible with good revenue administration, and they had nothing in common with the system which it is now proposed to introduce.

13. The Governor-General in Council requests that ——* will be good enough to state any opinions which he may hold in regard to the subject of this letter, and that he will favour the Government of India with any recommendations the adoption of which may appear to him likely to increase the usefulness of the measures, of which a sketch has now been given.

* *To Madras and Bombay*—His Excellency the Governor in Council.

To Bengal—His Honour the Lieutenant-Governor.

14. If ——* should concur with the Government of India in the views stated in this letter and should consider legislation on the subject desirable, I am to request that ——† will state whether in his opinion it would be expedient to pass in the Council of the Governor-General a law applicable to ——‡ as well as to other parts of India, or whether ——† would prefer to deal with the subject in his own Council.

* *To Madras and Bombay*—His Excellency the Governor in Council.

To Bengal—His Honour the Lieutenant-Governor.

† *To Madras and Bombay*—His Excellency.

To Bengal—His Honour.

‡ Madras, Bombay, Bengal.

Re-published by order of His Excellency the Governor in Council.

R. S. ELLIS,
Chief Secretary.

CIRCULAR ORDER OF THE BOARD OF REVENUE.

No. XI. of 1870.

STANDING No. 295-2.

Proceedings of the Board of Revenue, dated 22nd July 1870, *No.* 4,999.

In every case in which the defence of a suit against an officer of Government is undertaken, in the first instance at the public expense, a copy of the judgment and decree of the Court in which the suit may be heard must be submitted through the Board for the information of Government.

(A true Extract.)

(Signed) J. GROSE,
Acting Secretary.

(True Copy.)

(Signed) J. T. MAYNE,
First Assistant.

ACT OF THE GOVERNMENT OF INDIA.

ACT No. XI. OF 1870.

THE INDIAN WEIGHTS AND MEASURES ACT, 1870.

An Act to regulate the Weights and Measures of British India.

Preamble.

Whereas it is expedient to provide for the ultimate adoption of an uniform system of weights and measures throughout British India; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Local extent.

1. This Act may be called "The Indian Weights and Measures Act, 1870," and extends to the whole of British India.

II.—Standards.

Standard of weight.

2. The primary standard of weight shall be called a Ser, and shall be a weight of metal in the possession of the Government of India, which weight, when weighed in a vacuum, is equal to the weight known in France as the "Kilogramme des Archives."

Standard of length.

3. The primary standard of length shall be called a Metre, and shall be the distance between the marks at the ends of a rod of metal in the possession of the Government of India, which distance, when measured at the temperature of melting ice, is equal to the measure of length known in France as the "Metre des Archives."

Units of weight and measurement.

4. The units of weight and measurement shall be—for weights, the said Ser;

for measures of capacity, a measure containing one such ser of water at its maximum density, weighed in a vacuum;

for measures of length, the said metre;

for measures of area, the square metre;

for measures of solidity, the cubic metre.

Special weights and measures to be authorized.

5. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, declare the magnitude and denominations of the weights and measures, other than the said units, to be authorized under this Act:

Provided that every such weight or measure shall be an integral multiple or integral submultiple of one of the units aforesaid.

The Governor-General in Council may, in like manner, revoke such notification.

Unless it be otherwise ordered in any such notification, the sub-divisions of all such

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weights and measures shall be expressed in decimal parts.

6. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, define the limits of districts for the purposes of this Act.

Districts how defined.

The local Government may, from time to time, by notification in the Official *Gazette*, define the limits of sub-districts for the purposes of this Act.

Sub-districts how defined.

7. The Governor-General in Council shall provide, in such manner and for such districts as the said Governor-General in Council shall direct, proper primary standards and sets of the said authorized weights and measures.

Primary standards to be provided.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

8. The local Government shall provide, in such manner and for such sub-districts as the local Government shall direct, copies of such of the said authorized weights and measures as shall be necessary to serve as local standards in such sub-districts.

Local standards to be provided.

Such local standards shall be deemed correct until they are proved to be otherwise.

III.—Use of new Weights and Measures.

9. Whenever the Governor-General in Council considers that proper standard weights and measures have been made available for the verification of the weights and measures to be used by any Government office or Municipal body or Railway Company, the Governor-General in Council may, by notification in the *Gazette of India*, direct that, after a date to be fixed therein, all or any of the weights and measures authorized as aforesaid shall be used in the dealings and contracts by such office, body, or company.

Use of new weights and measures in Government offices, &c.

10. The Governor-General in Council, or the local Government with the previous assent of the Governor-General in Council, may, by notification in the Official *Gazette*, direct that, after a date to be fixed therein, all or any of the weights and measures of capacity authorized as aforesaid shall, in every district or sub-district therein mentioned, be used in the dealings and contracts of all persons engaged in business or trade, or of the persons engaged in any specified business or trade;

General use of new weights and measures of capacity.

and may in like manner, from time to time, alter or revoke such direction;

Provided that no such notification shall issue until proper standard weights and measures have been provided for such district or sub-district.

11. After the date fixed in any notification under Section 9 or Section 10, all dealings and contracts had and made by the Officers, Bodies, Companies, or persons mentioned or referred to in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, length, area, or solidity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights and measures of capacity, length, area or solidity, as the case may be, directed in such notification to be used by such Officers, Bodies, Companies or persons.

Contracts by weight or measure.

IV.—Wardens.

12. The Governor-General in Council (as regards the said primary standards and sets of authorized weights and measures) and the local Government (as regards the said local standards) shall appoint wardens for the custody of the said standards and sets of authorized weights and measures.

Appointment of wardens.

The Governor-General in Council, or the local Government, as the case may be, may at any time suspend or remove any such warden and appoint another person in his stead.

13. All officers of Government, Municipal officers, officers and servants of Railway Companies and persons engaged in businesses or trades, shall, so far as they are required by the rules made under Section 27, submit to a warden for verification the weights, weighing machines, and measures used by them under the provisions of Section 9 or Section 10, and the balances used by them in their dealings at such times, not oftener than once in two years, and pay for such verification such fee as the said rules shall prescribe.

Periodical verification of weights, measures, and balances.

14. Every such warden (so far as he is required by the rules made under Section 27) shall verify, and shall, if requested so to do, correct all weights, weighing machines, and measures purporting to indicate weights or measures authorized under this Act, and all balances, which are brought to him to be verified or corrected, and which appear to him fit for verification or correction.

Warden to verify and correct weights, measures, and balances.

When such weights, machines, measures, or balances are found or made correct and in conformity with the requirements of this Act, he shall certify such correctness and conformity by stamping, engraving, or branding them with the proper mark.

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15. The warden may deface, or render incapable of use, or refuse to verify, correct, or mark anything so brought which appears to him unfit for verification or correction.

May refuse to verify or correct things unfit.

16. All prosecutions under this Act shall be instituted and conducted by a warden, or by such person as in each case the warden may appoint in this behalf.

To institute and conduct prosecutions.

17. On the application of a warden, any officer in charge of a Police station, and in a Presidency town any Inspector or superior officer of Police, may enter any premises or shop within the limits of such station or town for the purpose of inspecting or searching for weights, weighing machines, and measures kept for use under the provisions of Section 9 or 10, and for the purpose of inspecting or searching for the balances kept for use in the dealings of the person occupying such premises or shop.

Search for weights, measures, and balances not verified or not correct.

If such officer find in such premises or shop any such weight, machine, measure or balance which shall not be verified under the provisions herein contained, or in conformity with the requirements of this Act, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

18. Any of the powers and duties conferred and imposed by this Act on a warden may be exercised and performed by any other officer whom the local Government may from time to time appoint.

Exercise of any of warden's powers.

V.—Penalties.

19. The Governor-General in Council, or the local Government with the previous assent of the Governor-General in Council, may, by notification in the Official *Gazette*, fix the date from which all or any of the provisions of Sections 20, 21, 22, and 24 shall come into force in respect to any district or sub-district, and the said sections shall be of no effect in such district or sub-district except in so far as they shall have so come into force.

Commencement of penal sections.

20. Whoever sells any weight, weighing machine, or measure purporting to indicate any weight or measure authorized under this Act and directed to be used under Section 9 or 10, or any balance, which weight, machine, measure, or balance shall not have been verified under the provisions herein contained, shall, for every such sale, be liable to a fine not exceeding 5 rupees,

Sale of weights, measures, and balances not verified.

and, in default of payment thereof, to imprisonment for a term not exceeding a week.

21. Whoever uses or has in his possession for purposes of business or trade any weight, weighing machine, or measure purporting to indicate any weight or measure authorized under this Act and directed to be used by him under Section 9 or 10, or any balance, which weight, machine, measure or balance being correct and in conformity with the requirements of this Act, shall not have been verified under the provisions herein contained, shall, for every such thing so used or had in possession, be liable to a fine not exceeding 5 rupees,

Use of weights, measures, and balances not verified but correct.

and, in default of payment thereof, to imprisonment for a term not exceeding a week.

Use of weights, measures, and balances not verified and not correct.

22. Whoever uses or has in his possession, for purposes of business or trade,

any weight or measure other than a weight or measure directed to be used by him under Section 9 or 10, or any machine for the purpose of indicating any weight other than a weight so directed to be used,

or any weight, weighing machine, or measure purporting to indicate any weight or measure authorized under this Act, and directed to be used by him under Section 9 or 10, or any balance, which weight, measure, machine, or balance has not been verified under this Act and is not correct, or is not in conformity with the requirements of this Act,

shall for every such offence be liable to a fine not exceeding 10 rupees,

and, in default of payment thereof, to imprisonment for a term not exceeding a fortnight:

Provided that nothing herein contained shall render it penal to use or to have in possession for purposes of business or trade any weight or measure in accordance with the standards of weights and measures established throughout the United Kingdom of Great Britain and Ireland.

Proviso as to weights and measures of the United Kingdom.

23. No person shall be convicted under Section 21 or Section 22 unless the warden shall have proved that weights or measures verified under this Act and suitable for the purposes of the business or trade of such person were publicly

Convictions under Sections 21 and 22 how limited.

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offered for sale and procurable at a reasonable price in the district or sub-district in which the offence was committed, and at, or immediately before, the time when the offence was committed.

Failure to submit for verification.

24. Whoever fails to submit for verification under Section 13 any weight, weighing machine, or measure used by him under the provisions of Section 9 or Section 10, or any balance used by him in his dealings, shall be liable to a fine not exceeding 50 rupees,

and, in default of payment thereof, to imprisonment for a term not exceeding one month.

Disposal of things in respect to which convictions take place.

25. A Magistrate convicting any person under Section 20, 21, 22, or 24 of this Act, or under Chapter XIII of the Indian Penal Code, (*of offences relating to weighing and measuring*,) may order the thing in respect to which the conviction took place to be brought before a warden, to be dealt with under the provisions of Sections 14 and 15:

Provided that, if the Magistrate consider such thing unfit for verification or correction, he may, instead of ordering it to be brought before a warden, cause it to be defaced or rendered incapable of use.

Counterfeiting warden's marks.

26. Whoever knowingly counterfeits any mark used by a warden under Section 14 shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

VI.—Miscellaneous.

Power to make rules.

27. The Governor-General in Council may, from time to time, make rules consistent with this Act for regulating the following matters:—

(*a.*) The appointment of wardens;

(*b.*) The guidance of wardens in all matters connected with the performance of their duties;

(*c.*) The provision, re-placement, custody, and use of the standards;

(*d.*) The method of verifying local standards and weights, weighing machines, and measures authorized under this Act, and balances, and of certifying such verification;

(*e.*) The errors which may be tolerated in weights, weighing machines, and measures authorised under this Act, and in balances;

(*f.*) The shapes, proportions, and dimensions to be given to weights, weighing machines, and measures authorized under this Act, and to balances, and the materials of which they may be made;

(*g.*) The marking on weights and measures authorized under this Act of their several denominations;

(*h.*) The conditions under which Government offices, Municipal bodies, Railway Companies, and persons engaged in businesses or trades, shall be subject to inspection and verification of the weights, weighing machines, and measures authorized under this Act, and of the balances used or sold by them;

(*i.*) The fees to be paid for verifying, correcting, and certifying the verification of weights, weighing machines, and measures authorized under this Act, and of balances.

Publication of rules.

28. Such rules shall be published in the *Gazette of India*.

Commencement of rules.

And the Governor-General in Council, or the local Government with the previous assent of the Governor-General in Council, may, by notification in the Official *Gazette*, declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office, Municipal body, or Railway Company, or of the persons engaged in any specified business or trade in any district or sub-district, and thereupon to the extent specified in such notification, such rules or rule shall have the force of law.

Recovery of fines and fees.

29. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras, and Bombay, in the manner prescribed by the Code of Criminal Procedure, and, if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

All fees payable under this Act shall be recoverable as though they were fines.

Tables of equivalents.

30. The local Government may, from time to time, prepare tables of the equivalents of weights and measures, other than those authorized under this Act, in terms of the weights and measures so authorized and the equivalents so stated, after notification in the local Official *Gazette*, shall be deemed the true equivalents.

WHITLEY STOKES,
Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

R. S. ELLIS,
Chief Secretary.

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THE

MADRAS REVENUE REGISTER.

No. 9.] MADRAS:—THURSDAY, SEPTEMBER 15, 1870. [Vol. IV.

MIRASSI RIGHT—II.

In a former issue we spoke of the claims put forward by mirassidars to waste lands, and of a pamphlet advocating those claims published by Mr. Ragoonath Row. In the scheme proposed by that gentleman for a new settlement of the Tanjore District we saw how the proposal, if carried out, would have the tendency to create a class of landlords paying a permanent settlement, and enjoying the whole of the lands now lying waste. This system of settlement is, we believe, what is advocated by all upholders of mirassi right; a right which, they urge, has descended to them from time immemorial. The policy of the English Government was declared to be that of continuing to the inhabitants of India all rights and privileges, which existed when the English took the reins of Government. This being the proclaimed policy, the mirassidars maintain that they are entitled to all the benefits which they can prove that they have enjoyed under former Governments. There is no doubt but what proprietors of land have always in this country been allowed certain privileges. Whether those privileges extend as far as the claims of the mirassidars do, and further, in what parts of this Presidency mirassi right actually exists, we now propose to discuss.

We will commence with the second point first. Some months ago, in our issue of November, we stated that a great number of mirassidars owed their existence to a creation of English Collectors. This opinion we again repeat. We fancy there can be no doubt that, if the British Government resolved to continue the privileges of the cultivators *as they found them,* there could not have existed in any of the countries under the Mahomedan rule any mirassi rights, as now claimed, whatsoever. That all land is the property of the ruling power, and has to pay tribute to the Government, is one of the primary maxims of the Mahomedan religion. The Koran even goes so far as to allow no unbelievers to hold any land at all, except on payment of tribute, and enjoins upon the faithful to "fight against them who believe not in God * * * *until they pay tribute* by right of subjection." (Chapter IX.) Where a Government is entitled to tribute from land, it is entitled to a tribute from *all* lands: the effect, however, of the claims of the mirassidars is to keep a certain quantity of land uncultivated, for their own use, without paying any tribute for it whatsoever. We may, therefore, not unreasonably assume that the existence of a mirassi or *proprietary* right under a Mussulman Government, would have been an anomaly, and that, if it existed, we can only look for it in those countries to which the Mahomedan rule did not extend.

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It is a significant fact that in most of the districts round the Presidency town, and which formerly formed a portion of the Carnatic kingdom, and were under the rule of the Nabob of Arcot, mirassidars, when about to represent a claim or a grievance, invariably preface their remarks by stating, "I am a mirassidar of fusly so and so," (the fusly so named being generally one in the commencement of this century). In South Arcot, and in some of the southern taluks of Chingleput and North Arcot, the phrase generally used is, "I am a mirassidar of Fusly '17." When we come to look closer at this, we find that this fusly was the one in which the claims of the mirassidars of these districts were finally settled, or, in other words, created. Were it true that these claims were prior to that date or immemorial, it is scarcely credible that the claimants should not fix an earlier date as the one when their rights first commenced. Chingleput and the vicinity of Madras was the part of the country where the English first acquired land. In the commencement of the last century, the Civil Servants at Madras held land to a large extent under the native Government, through their dubashes or native agents. Gradually the dubashes managed to get this land into their own hands, and from time to time, aided by the unsettled state of the country, they made fresh purchases from ryots, who, driven by war into the Presidency, were only too glad to sell their holdings. These dubashes gradually formed themselves into a class of landholders, employing first of all sub-renters to cultivate their lands, and latterly taking them under their own direct management. After some time the dubashes had gained themselves so much influence, that they formed a faction of great power, and the claims they advanced to rights and privileges were urged with no small pertinacity. Chingleput, or, as it was then called, "the jaghire," was thus in a continual state of confusion; the "upstart dubashes" were eternally clashing with the few remaining ryots, and all attempts to produce any unanimity failed. Such is the report of the "Select Committee on the affairs of the East India Company" dated 1812. When things were in this state, Lionel Place was made Collector of the jaghire, and his efforts were chiefly directed to the restoration of order. During the course of the inquiries made by Mr. Place, previous to making a settlement with the landholders, the ryots put forward what were called mirassi claims, and so unknown do these claims appear to have been up to this time, that the Select Committee state (page 12) "that it *was the first instance of any such claims being brought forward*." These claims seem at first to have been made with a view to the assertion of a hereditary proprietary right in lands held by mirassidars, and it was urged that this right dated from the time of the Hindu rulers, and had been continued under the Mahomedan Government. The word "mirass" is undoubtedly of Arabic origin, and it is equally certain that it was used by Mahomedan Governments in speaking of certain tenures of land. We, however, are of opinion that it refers merely to the hereditary right of landholders to the land they possessed, but not to claims to other lands which they did not hold. Two points may serve to warrant our presumption,—firstly, the indiscriminate way in which the term "mirassidar" is everywhere, in the South of India, used, not only with reference to landholdings, but also with reference to service tenures. A village monigar, a pagoda goorookal, and a common toty have each a mirassi right to the appointment he holds and to the emoluments attached to it, *but not to any other*. This mirassi right is simply an hereditary one. The sole and simple privilege attached to it is, that the appoint-

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ment will descend, according to the ordinary course of things, from father to son. A word which is used equally with reference to land and service tenures must surely have the same meaning in either instance. Those privileges which do not exist in a service "mirass" can scarcely be assumed to exist in a land "mirass." Secondly: in order to prove that the privileges claimed, dated from the times of the Hindu rajahs, the would-be mirassidars urged that there was a recognized Malabar expression for the Arabic term. The word they used, and which is still in use as a synonym of "mirass," is the word *caniatchy*, derived from *cani* = land and *atchy* = heritage. The Malabar synonym, therefore, has precisely the same signification as what we have attached to the Arabic title. We have seen how restricted the meaning of the Arabic title is with regard to service tenures, and we can, therefore, scarcely be said to be incorrect, when we maintain that, as regards the land tenure, the word "mirass" means nothing more than what it does as regards a service tenure, nor more than what the vernacular synonym warrants us in attaching to it. This hereditary right, however, has been finally settled. It has been acknowledged that, as long as a ryot pays the rent of his holding, so long will it be continued in his enjoyment, and in the same way enactments have been passed to continue to village servants and their heirs the emoluments attached to the offices they fill *as long* as they perform the work.

The claims put forward by the mirassidars of the jaghire found a ready supporter in Mr. Place, whom we shall not be far from wrong in styling the "father of mirassidars." The claim, which was probably at first only advanced in order to secure an hereditary right to the land occupied, gradually developed. Settlements which had in reality been only temporary ones, or such as had been made by the Nabobs during years of war, when they were only anxious to raise money as quickly as possible, were cited as the basis on which to form a new and permanent settlement, and were alleged to be the tenures on which the land had been held from time immemorial. All the complications of "Swatantrams," "Pardie marahs," and "[illegible]die marahs," or the manner in which the crops were divided between the land-owner and the tenant arose, and were all brought forward as showing the proprietary right of the land-owner, as opposed to that of the *poyacarry*, and as independent of the Government right to the land, whereas in reality these fees, apportioned on division of the crops, had hitherto been paid, not because the land-owners were entitled to them from time immemorial, but because, during the recent years of disorder and almost anarchy, these fees had been paid by the poorer land-holders to the richer, in order to gain from the latter a protection which the Government itself was unable to afford. When, therefore, a period of peace set in, and when a new Government, able to protect its subjects, took the place of the former weak and incompetent rulers, these arrangements, which had been made only recently during the years of misrule, should not have been assumed as the basis on which land tenures had always been held.

We are, therefore, of opinion that in all districts attached to, or forming a part of, the Carnatic, mirassidars or landholders having a vested right, not only in the lands for which they pay rent, but also in the uncultivated lands attached to their villages, and having also a right to exact fees, as mirassidars from poyacarries or strangers, cultivating those waste lands, are a class of men which never existed in those districts, until their existence was recognized for the first time by Mr. Place, who, considering that usages, which had originated in times

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of anarchy and war, were of immemorial age, first gave to the would-be mirassidars a *locus standi* from which they were then able to put forward fresh claims. The result has been that the Board of Revenue, the local Government, and the Board of Directors at home have been continually in a state of perplexity. Contradictory orders have been given, and the uncertainty only tended to make the claimants more energetic in pressing their claims, in order that the position they asked for, might actually be defined by law. The numerous decrees which have been given in the High Court and the Zillah Civil Courts, on the mirassi question, have by no means helped to solve the difficulty. In a future issue we propose to give a brief resumé of the principal Court decrees and Government orders which have been passed.

We shall, therefore, answer the second of the questions, we proposed at the commencement of this article, by stating that mirassi right was, under the Mahomedan Governments, simply a right which confirmed the possession of land in the family of the holder as long as he paid the rent thereof; that the land tenure was closely allied to service tenure; and that the same name was given to both; and finally, that to have allowed a race of Hindu landholders, with a proprietary right in all the soil attached to each village, and a right which could not be interfered with by the Government, would have been an anomaly under a Mahomedan Government, and could, therefore, have had no recognized or legal existence, however it may have existed as a local usage or as a temporary custom which had arisen owing to the force of circumstances. If, therefore, mirassi right exists anywhere in the South of India, it will be found only in those countries which were under Hindu rule until they passed into British hands, such as Tanjore and Madura. It is indisputable that in these districts there exists a class of men, whom we found in the enjoyment of certain privileges. In our next notice of this subject we shall endeavour to show how far those privileges have extended, and how far the present mirassidars are justified in citing them as a proof of the justice of their present claims.

BRITISH RULE IN INDIA.

We have arrived at a period in the history of "Japhet dwelling in the tents of Shem," when it can do no harm, but probably a great deal of good, to look back upon British advent and British rule in this country. It is a period when it behoves our statesmen seriously to cast about in their minds and inquire what ought to be the future policy of Government in India. They can no longer be content to glide along the old grooves of past circumstances and events. Education has of late years effected great changes in the sentiments of the people: they are awakening to a sense of their rights as citizens; they no longer submit in silence, or look on with indifference; but they are beginning, with almost European frankness, to examine the policy of the Government which rules them, and to discuss the advantages and privileges which the circumstances of the present day require. Even rulers as well as ruled are already familiar with the hitherto startling doctrine, "let the children of the soil share in the Government of their country." At a time like this especially, when the natives of India see two mighty European nations arrayed against each other regardless of what Great Britain may think or say, it is a question worth considering what position England is likely to occupy hereafter in the estimation of her own subjects, if not among the nations of the world. In herself, she is small—nay, almost insignificant—but in the gigantic mission she has

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been able to accomplish, in the mighty dependencies she has added to her little island rule, and in the aggregate of her splendid development and resources, she is truly grand and great, and may still be said to be foremost among nations and powers. And it is not too much to add that, were she to-morrow to be deprived of all her numerous dependencies, big and small, but possessing India alone, she would still be second to no other nation on earth, if not absolute mistress of the world. What, then, were we yesterday, and what are we to-day, in this land of the sun? What has been our past career; what are our future responsibilities towards the people of this country?

When the little band of adventurers from the far distant island first established a footing on the great peninsula of Hindustan, the mighty Akbar reigned as Great Mogul. He was both a warlike and a prudent prince, who sought, while physically subduing the restless hordes that surrounded him, mentally to enlighten them and to improve their moral and social condition, according to his instincts. He was succeeded after a lapse of fifty years, filled in by the reigns of Jehangeer and Shah Jehan, by the great Aurungzebe, who waged war for years against the ever-encroaching Mahrattas, attached many of the rajahs and independent chiefs as his tributaries, planted his viceroys in different districts, and nearly succeeded in bringing the whole peninsula under his single dominion. His territories extended from 10 to 35 degrees in latitude, and nearly as many in longitude; and his revenue amounted to £32,000,000 sterling. The magnificence of his court was described by intelligent travellers as exceeding anything that Europeans had ever seen. His splendid throne, set with diamonds, rubies, emeralds, and pearls, and worth more than six millions sterling,—the very floor of his palace paved with precious stones,—his elephants fed on meat, and regaled with sugar and brandy, and taught to bend the knee in the presence of their mighty master—his richly caparisoned horses, their bridles set with costly gems—his noble followers, each a prince in his way—his wondrous army of retainers, so large that his camp was thirty miles in circuit and contained half a million of people—all made up a state of pomp and circumstance that dazzled the minds of Europeans, and led those who had invested their money in the new trading scheme to expect much more than they could ever realize, though stupendously great have been the results actually accomplished in the course of time. Providence, however, had not destined the followers of the Prophet to be the great rulers of India. That destiny was reserved for the Anglo-Saxon race—for the successors of the little handful of enterprizing men who left home and country, not for territorial aggrandizement by conquest, but for the peaceful purposes of commerce and gain. The descendants of the illustrious Aurungzebe were feeble and unwarlike; and the empire declined, and soon after fell into the hands of the victorious Persians. The Affghans followed. The Rajpoots, the Jháts, and the Sikhs sprang to arms. The conquered rajahs ceased to pay any respect to the peacock throne; and the turbulent Mahrattas, ever ready to take advantage of embarrassed rulers, emerged from their fastnesses and aimed at the highest power for themselves. Wherever these famous warriors appeared, the frightened inhabitants fled to the mountains; wherever they planted their feet, all vegetation languished, standing crops were destroyed, and the horrors of famine ensued. From Calcutta, where the Mahratta ditch tells its own tale even to the present generation, to Delhi, where they levied blackmail on the wretched sovereign, the barbarians

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kept all races alike in constant terror. The country being in this unsettled state, the viceroys contented themselves with sending occasional presents to the Court at Delhi, and became in all but name so many independent sovereigns.

In the meantime, the little community of English settlers had been growing. So had the French and Portuguese adventurers. The English, indeed, at this time, were not at all by any means in advance of their rivals, and had, during the latter part of the reign of Aurungzebe, a very narrow escape of being turned out of the country altogether; but their commerce was important to the native princes, who interceded for them with the Great Mogul, and they were allowed to remain and prosper. In 1600, Queen Elizabeth granted a royal charter to the Association which formed the nucleus of the afterward world-renowned East India Company. Their first depôt was at Surat. In 1640 they obtained from a Hindu chief a spot of ground on which Madras now stands, and where they built Fort St. George. In 1698 they acquired a grant of land in Bengal from the Great Mogul, and there they built Fort William, and commenced a goodly city, now not very inaptly called "the city of palaces"—Calcutta. Then, Bombay, the dowry of Queen Catherine of Braganza, was sold to the Company by the king, her husband. And thus, the English acquired three stations or settlements, wide apart for carrying on their increasing commerce. By a succession of events scarcely to have been anticipated, these adventurous traders, who were utterly innocent of any desire of conquest, who were, indeed, quite unlearned in the art of war, who had no army and desired none, became warriors and conquerors in spite of themselves. First, the French caballed with the native princes and tried to dispossess the English. But Robert Clive, the civilian writer, snatched his countrymen from annihilation, and led them from one victory to another, until, by sheer force of will, he not only rescued them from such a fate, but gave them a power in the Carnatic they had never dreamt of possessing. Not only had he to make soldiers for the occasion, but he had himself to learn the art of war before he could teach his men to fight. Well did Chatham call him the "heaven-born general." He triumphed over every obstacle both in the Carnatic, and in Bengal, whither he was soon called to do for his country there what he had already done for her elsewhere. We need not relate how the despot who then ruled Bengal, Surajah Dowlah, took possession of Calcutta, and incarcerated the unhappy English in the famous Black Hole. Clive dragged the tyrant down to the dust, and afterwards deposed him and put Meer Jaffeer in his place by force of British power. Then the French made another attempt to dispossess the English at Madras; but the victory of Wandewash, gained by Sir Eyre Coote, resulted in the establishment of English supremacy and the termination of French power in India. And thus did peaceful traders, in spite of themselves, become conquering soldiers.

But the English had still many foes to encounter. The Mysoreans in the south, and the Mahrattas everywhere, needed all their energy and skill. Meanwhile the power, which the onward course of events had compelled the Home Government to delegate to them, fully employed their time and called for the exercise of prompt yet prudent administrative action. In 1773, when Hastings became Governor-General, there was a large standing army, composed mainly of native sepoys under European Officers. The revenues of the Company—thanks to the energy and diplomacy, but, we are sorry to be obliged to add, the unscrupulous conduct of Warren Hastings—recovered from the collapse incidental to

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converting all the English clerks and merchant factors into soldiers and diplomatists. From 1773 to the present time, India has been ruled by a Governor-General with various modifications in his power and in his executive staff. During this period we have had war upon war, and we may add mutiny after mutiny; and at the present day, notwithstanding the civilizing influences of British rule, commerce, and education, we can only hold India and ensure peace and safety for the English residents by means of a large and most expensive standing army. India is now governed by a Viceroy, whose appointment is in the hands of the Home Government; but, unfortunately for the complete prosperity of the country, his power for good, always supposing that he is equal to the occasion, is trammelled both by local prejudice here and by the ignorance of the Secretary of State at home. In spite, however, of all shortcomings in the past, and the ample room that there is for amendment both in the present and in the future, it is a grand fact, full of credit and glory to the English name, that a little band of adventurous traders have acquired for the nation an empire containing 180 millions of inhabitants.

The question, then, arises—a question pregnant with interest to every English mind—are those millions of human beings *really* better off under our rule than they would have been had our armies never entered India? When the Moslem power melted away, there was no corresponding power in the whole peninsula to take its place, and the country, therefore, became broken up into fragmentary kingdoms and principalities, which were ever conspiring to overthrow each other, and all by turns leagued with, or against, the robber horde of Mahrattas. No unity could ever spring from such a chaos, no morality flourish where all alike was immoral, and no civilization advance when all were debased by the same grovelling superstition. We have, by the mere force of our great strength, united into one mighty kingdom these princely fragments, and have endeavoured to govern them by a uniform code of laws on principles of the strictest justice. We have opposed the power of a pure religion to Hindu superstition and Moslem bigotry, and the principles of honour and sincerity to deceit and falsehood. But the same difficulty which met the conqueror of old meets the conqueror of to-day. Neither one, nor the other, has been able to overcome the barrier of "caste." The brahmin of to-day is still the brahmin of the tenth century, to whose mind the pollution of the Christian is quite as bad as that of the Mussulman. The great divisions of mankind in India have divided and subdivided into an infinity of sects or castes; and still each class preserves its peculiar distinction. A distinctive trade or calling is as strictly hereditary as entailed property in England; and a Hindu, without any shame or misgiving, will record himself as an hereditary beggar, robber, hangman, or buffoon. We send out missionaries; but there are comparatively few conversions, nor are they likely to be frequent in a country where the consequent loss of caste is, not only utter disgrace, but actual expulsion from home and severance of all family ties. We have given India good roads, the railway, and the telegraph. We have opened for the Hindu the road to civilization and moral elevation; but, in doing so, we have awakened higher aims and desires, which, at present at all events, there does not seem much opportunity of realizing. On the one hand, by means of a European education, we have unsettled their faith without offering them a substitute system which they will accept; and, on the other hand, by morally elevating them, we have made them discontented with their condition of a conquered people, and yet will not give them

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opportunities of participating in the government of themselves. In the interest of the world at large, as well as that of the native races themselves, there cannot be the smallest room to doubt that it is far better that India should be as she now is, than that she should be, as we found her, split up into factions under tyrant despots, great and small. But there is much yet to be done for her, not only in justice to the people themselves, but for the very credit of the English name. What the future of India may be, it is difficult to foresee; what it shall be, is a problem very difficult to solve. Whether our vocation is simply to educate the native races up to the point of self-government, and then hand over to them an empire purified and strengthened—or whether it is our mission to retain India for all time, as she now is, the most glorious of the many appendages of the British Crown—is a question worth the consideration of our best statesmen and most advanced philosophers. But we feel certain, from our knowledge of the people, that they would prefer the proud privilege of being "British subjects," *in fact* and not only in name, rather than be left to the lottery of entire self-government, or the certainty of being a prey to some powerful, but not over-scrupulous, European power. In either case, however, England has yet a great work to perform, and a heavy responsibility lies upon India's rulers. We have awakened desires and instilled instincts which it is our duty to gratify; and while retaining the highest power in our own hands, we must nevertheless give the children of the soil all the privileges of a free people, all the opportunity of social advancement, every facility to share in the government of themselves, without any distinction of caste, colour, or creed.

HIGH COURT—MADRAS.

(Appellate Side.)

SCOTLAND, C. J., AND COLLETT, J.

Rent Recovery Act—Sections 41 *to* 43*—Collector's proceedings—Appeal.*

Where warrants for dispossessing certain ryots were issued under Section 41, *Act VIII of* 1865, *and the Collector, on petitions under Section* 43, *referred the parties to arbitration and passed an order in accordance with the award, the Civil Judge set aside the order on the ground of misjoinder.*

HELD, *that the Civil Court has jurisdiction to hear a regular appeal under the Rent Recovery Act, only when there has been a judgment by a Collector in a summary suit under that Act; and that the proceedings taken under Sections* 41 *to* 43 *were ministerial on the part of the Collector, and not in the nature of a suit.*

Civil Mis. Petition 96 *of* 1870.

Maidai Dalawy Kumarasawmy Moodelliar and two others *v.* Nallakannu Taven and thirty-one others.

THE plaintiffs (landlords) ejected defendants, (their tenants), under Section 41 of Act VIII of 1865; the tenants appealed under Section 43, and pleaded that they had paid what was due, and denied the agreement produced by the landlords. The Sub-Collector, Mr. Sewell, referred all parties to arbitration, requiring the arbitrators to find on the three following issues;—first, whether puttahs and muchilkas had been exchanged or dispensed with between the parties, so as to enable the defendants to apply for warrants of ejectment under Section 41 of Act VIII of 1865; second, whether the ryots had, or had not, paid the mélvaram for Fusly 1276 to the lessees; third, whether there was sufficient property on the premises of the ryots to cover the amount of arrears alleged to be due. The arbitrators found first, that muchilkas had been given by the ryots to their landlords; second, that they had not paid the mélvaram for Fusly 1276; and third, that they had not sufficient property to cover the amount of arrears alleged to be due. On these findings, the Sub-Collector granted the landlords the warrants of ejectment applied for by them, which had been previously granted, but had been suspended during the pendency of this suit. The ryots then appealed to the Civil Court of Tinnevelly. The Civil Judge (Mr. Child) was of opinion, that it was utterly impossible to give a just decree where the parties were so improperly joined together. The three landlords were all separate from each other; so were the thirty-eight ryots; and their individual rights might differ very much. The Sub-Collector had acted in accordance

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with the provisions of the old Act, and had not complied with the provisions of Chapter 6 of the Civil Procedure Code, as required by Section 74 of the present Rent Recovery Act, (VIII of 1865). In fact, Mr. Child was of opinion, that the whole proceedings were illegal and unsatisfactory; the more unsatisfactory, as the misjoinder was the fault of the Sub-Collector, and not of the ryots who had each presented a separate petition. The Civil Judge, therefore, reversed the decree, and directed the Sub-Collector to take up each case separately, and try the matter *de novo*. He was further of opinion, that the case was one of great importance, as it appeared that the ryots had occupation rights, and ejectment was, therefore, a serious matter. From this decision, the landlords appealed to the High Court on the following, among other, grounds—that the Civil Judge had acted without jurisdiction in this case; that the Collector's decision, passed in accordance with the award of the arbitrators, was final under the Civil Procedure Code; that the proceedings held by the Civil Judge in appeal therefrom were null and void, *ab initio;* and that there was no objection to several landlords joining in the same suit when the issues in dispute were the same or similar, and when all parties concerned agreed to such an arrangement. Srinivassa Charry for special appellants; Kuppuramasawmi Sastry for special respondents.

The High Court delivered the following

Judgment:—3rd May 1870.

In this case, certain landholders applied to the Collector for warrants to be put into possession of lands under Section 41, Madras Act VIII of 1865. The warrants were issued, but some of the ryots appealed under Section 43, by presenting ordinary petitions. In disposing of those petitions, the Collector referred certain questions to arbitrators, named by the parties, and then made an order in accordance with their award. The Civil Court has heard an appeal from this order. It is quite clear that Section 69 gives the Civil Court jurisdiction to hear a regular appeal, only when there has been a judgment by the Collector in a summary suit under the Act. Section 50 and the following sections provide the procedure to be observed in summary suits before the Collector; and the proceedings taken in this instance under Sections 41 to 43, were not of the nature of a suit, or governed by the procedure in Section 50 and following sections. The landholder is entitled, on application, to the issue of a warrant under Section 41, and that is a ministerial act of the Collector; upon the production of the written statement required by the section. The warrant is executed by the Police, unless the ryot appeals to the Collector to show cause why the warrant should not be executed, and Section 44 contemplates that the execution of the warrant may be followed by a civil suit to reverse the delivery of possession. Clearly, therefore, the Collector had, on this occasion, no summary suit before him: he was merely executing a special summary remedy given to the landholder against the ryot for non-payment of rent, and that was petitioned against. That the Sub-Collector has, in the present instance, chosen to designate his proceedings a summary suit, cannot, of course, constitute them such. It was also, of course, open to the Collector, in performing this as well as any other executive duty, to refer any questions in dispute between the parties to arbitrators named by them. The Civil Court, therefore, in hearing the appeal, exercised a jurisdiction not vested in it by law, and the case falls within Section 35, Act XXIII of 1861, though it cannot properly be disposed of by us as a special appeal. The record being before us, we think that it is our duty to proceed under Section 35; and we shall accordingly make an order setting aside the decision passed on appeal by the Civil Court.

As is usual under this section, we shall make no order as to costs.

SCOTLAND, C. J., AND COLLETT, J.

Ferry—Lease—Suretyship—Principal and agent—Construction of documents.

Where A took the lease of a ferry with B as his surety, and, to indemnify him, executed a karar stipulating that the collections were to be made through B; and where B, on this karar, dispossessed A of the ferry, alleging that he (A) was simply the agent, while he (B) was the party really beneficially interested—

HELD, *that the reasonable and natural construction of the documents was, that the transaction was what it purported to be, namely, a lease of the ferry to A in his name and for his benefit, and an agreement to protect B from any loss as surety; and that, whatever sums B received beyond the amount of his liability, he received and held in trust for A.*

S. A. 237 *of* 1869.

Rungan and two others *v.* Tandava Chetty.

PLAINTIFFS took the ferry of Pallipalium on a ten-years' lease from the agraharamdars in 1866 at Rupees 305 per annum, exchanging the customary puttah and muchilka. Defendant became guaranteed for the due fulfilment of the contract on the security of the puttah, which plaintiffs gave him. In May 1867, defendant took forcible management of the ferry; plaintiffs, therefore, brought this suit to restrain him, to establish their sole right to the ferry-rent, and to recover collections to the value of Rupees 400 and after-revenue. The defendant admitted his suretyship; but stated

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that, after the puttah executed in September 1866, plaintiffs executed to him a karar, to the effect that he had the right to profits and losses; that they were his employés; and that the daily collections were to be paid to him. He further alleged that he had been managing the ferry collections; that, as plaintiffs had fraudulently misappropriated Rupees 100, he had removed them; that he had not taken forcible possession; that the collections were not so large as represented; and that plaintiffs had received wages from him. Mr. Shunker, the District Munsiff of Salem, found that plaintiffs relied mainly on their Exhibit A., which purported to be a muchilka executed by them to the agraharamdars, from whom they leased the ferry, and had received the usual puttah. This document was admitted by defendant, and proved by the lessors. Defendant, on the other hand, relied on Exhibit XI., a karar subsequently executed to him by plaintiffs. The District Munsiff failed to discover in these documents anything that would justify the recognition of the defendant as the rightful proprietor of the ferry. He found the muchilka plain and unmistakable in its terms: it stated that plaintiffs had taken out the puttah *themselves*, and that they would pay the kist, &c., through the surety; indeed, to his mind it explained Document XI., and distinctly submitted the point of forfeiture (in the event of non-performance on plaintiffs' part) to the agraharamdars, and not to the defendant.

The District Munsiff, therefore, found for the plaintiffs, saddling defendant with all costs. Defendant appealed to the Civil Court of Salem. Mr. Chamier, the Civil Judge, admitted that there was no doubt of the plaintiffs being the actual lessees of the ferry, but was of opinion that it was quite open to defendant to show that this was merely nominal, and that he alone possessed a beneficial interest in the lease. From the karar (Exhibit XI.) it seemed clear that defendant had procured the lease from the agraharamdars for the plaintiffs; that he received the puttah for them; that, in consideration of this, plaintiffs agreed to observe the conditions of the lease, and to pay over *all* their collections to him; and further, to give up their right to the ferry if any dispute should arise. This instrument, then, was to be considered as valid in law and binding on the parties: it also showed the true nature of the lease, namely, that plaintiffs were merely the agents of the defendant, liable to be discharged if anything went wrong. A dispute arose in consequence of plaintiffs having misappropriated some of the collections, and defendant, from that time, took the management of the ferry out of their hands. This, the Civil Judge held, he was quite competent to do; further, that XI. proved that plaintiffs had no beneficial interest in the lease, as all profits were to go to defendant, while their remuneration was to consist of a percentage on the collections; that, as plaintiffs did not complain to the Magistrate when the ferry was taken out of their hands, it was clear they did not then think they had any substantial rights under the lease. For all these reasons, Mr. Chamier reversed the Munsiff's decision, and dismissed the suit. Plaintiffs appealed to the High Court on the following, among other, grounds—that the true construction of the agreement was that defendant was security to the lessors for due performance by plaintiffs, and that Exhibit XI., was to operate as an indemnity to defendant; and that, upon the construction placed upon it by the Civil Judge, there would be no consideration for XI. Mayne and Rama Row for appellants; Sunjiva Row for respondent.

The High Court delivered the following

Judgment:—8th December 1869.

The questions for decision in this case were—first, as to the real relation of plaintiffs and defendant as constituted by Exhibits A. and No. XI.; and secondly, whether the defendant was justified, under the terms of Exhibit No. XI., in entering upon possession of the ferry. As the first question turns entirely upon the right construction of the two documents, its consideration is open to us on special appeal. Exhibit A. is in form a muchilka, or counterpart to a lease executed by the plaintiffs to the agraharamdars, the owners of the ferry. It is dated the 10th September 1866, and in form the defendant became surety for the plaintiffs to the agraharamdars for the due performance of the stipulations in Exhibit A. Exhibit No. XI., is dated the 18th September 1866, and is executed by the plaintiffs to the defendant; and its obvious and natural purpose was, as its terms show, to indemnify the defendant for the liability he had undertaken towards the agraharamdars, as surety for the plaintiffs. The stipulation that all collections were to be paid over to the defendant or to his goomastah, was naturally enough provided to protect the defendant from any loss as surety. But there is nothing, either in this stipulation or in any other part of the two documents, to lead to the conclusion that the real purpose of the documents was, a lease to the plaintiffs, but in their names only, and for the real and sole benefit of the defendant. The natural and reasonable construction of the documents is that the transaction was, what it purports to have been, a lease of the ferry to the plaintiffs in their names and for their benefit, with the defendant as their surety, and their agreement for the purpose of protecting the defendant from any loss as surety. Whatever sums the defendant might receive under such agreement, beyond the amount of his liability as surety, would be

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held by him in trust for the benefit of the plaintiffs. We, therefore, think that the late Civil Judge has, upon the first question, taken an erroneous view as to the relation of the parties.

The second question, so far as it is a question of fact, is not for our consideration; and, if there had been a clear finding upon it by the lower Courts, we should be concluded by it. In the Court of first instance, there certainly was no finding at all upon it, though, in the view taken by that Court upon the first question, it should have gone on to consider the second question. In the middle of the judgment of the late Civil Judge, there occurs a sentence which has reference to the second question; but it is so mixed up with, and affected by, his judgment upon the first question, that it cannot, we think, be rightly regarded as a clear finding upon it. Thus, the Civil Judge does not find what was the amount of the collections kept back by the plaintiff; and, in his view of the first question, it was immaterial; but, if it should turn out that the defendant had received the full amount of his liability as surety, it would have to be considered whether the fact that the plaintiffs retained only what the defendant would, as trustee for them, have been bound at once to pay back to them, could be treated as a forfeiture under Exhibit No. XI., entitling the defendant to enter upon possession of the ferry. As we differ from the judgment of the Civil Court upon the first question, we think that it is essential to a right decision of this case, that we should now send down for the decision of the Civil Court an issue embodying the second question in this appeal, namely, Whether there was a forfeiture by the plaintiffs, under the terms of Exhibit No. XI., entitling the defendant to enter upon, and keep possession of the ferry.

[To this issue the Civil Judge returned a finding on the 14th February 1870, to the effect that there was no forfeiture by plaintiffs, under the terms of Exhibit XI., entitling the defendant to enter upon, and keep possession of the ferry.]

HIGH COURT—CALCUTTA.

[APPELLATE—CIVIL.]

NORMAN, OFFICIATING CHIEF JUSTICE, and BAYLEY and HOBHOUSE, SIR C. P., *Bart.*, J. J.

Harrak Sing and another (defendants) *v.* Tulsi Ram Sahu (plaintiff.)*

Petition of appeal under Section 15, Letters Patent —Time for presenting the petition—Practice— Suit for enhancement of rent—Act X of 1859, Section 4—Pleading.

Per NORMAN *and* HOBHOUSE, J. J., (BAYLEY, J., *dissenting*), HELD *that, in the present case, the defendant had not, either in the written statement filed by him or by his statements in examination, raised the question whether he was entitled to the benefit of Section 4 of Act X of 1859.*

(Per PEACOCK, C. J., *and* KEMP *and* MACPHERSON, J. J.—*A petition of appeal, under Section 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented within thirty days from the time when the written judgments of the Division Bench are put in. The difference of practice on the Original and Appellate Jurisdictions of the High Court contrasted*).

THIS was a suit for enhancement of rent, on the ground of improvements caused to the land by irrigation, which had been made at the plaintiff's expense. It was admitted by the defendants that the plaintiff had been at some expense in providing means of irrigation for the village by repairing an *ahur*, but their witnesses denied that their land had received any benefit from the irrigation.

The defendants also stated that their rent had been unchanged for more than twenty years; but not that they had a right to hold at fixed rates, on the ground of their rent having been unchanged since the time of the Permanent Settlement. No issue, therefore, was fixed on the point.

The defendants in their written statement said that "by a fixed hereditary holding *(gujasta* "*maurasi)* from ancient times, more than twenty " years, without change or increase or decrease of " rent, this land has been held."

In giving his evidence, one of them said, " From the time of my father this cultivation is " *khilmi* ancestral. In 1263 (1856) the lands under " cultivation were under my possession, and, since " my lands had been *khilmi jote*, from that time " one *patta* or rate has prevailed."

The plaintiff also claimed enhancement on the ground of increased area; but, as this ground was not mentioned in the notice, his claim was disallowed.

The Assistant Collector gave plaintiff a decree for the amount stated in the notice, Rupees 151-8-3.

The Judge, on appeal by the defendants, modified the decree as being in excess of what it appeared proper to give under a report of a local inquiry previously ordered by him.

* Appeal No. 1 of 1870, under Section 15 of the Letters Patent, against the decision of Mr. Justice L. S. Jackson, which prevailed on that of Mr. Justice Mitter in Special Appeal, No. 1,208, of 1868, dated the 25th November 1869, the said Judges being divided in opinion.

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The defendants then appealed to the High Court on the grounds—

(1.) That, when the Judge had found that the plaintiff was not entitled to the enhanced rate which he claimed in respect of all the lands, the suit should have been dismissed.

(2.) When the plaintiff could not prove that he was entitled to the rates claimed in the plaint, his suit in regard to such land should have been dismissed.

(3.) The Courts below should have fixed and tried an issue under Section 4, Act X of 1859, which was distinctly and sufficiently pleaded.

(4.) It had not been found that the productive powers of the land had increased at all from former years; the mere fact of repairing an *ahur* would not entitle plaintiffs to enhance, until it was found that the expense incurred by the zemindar resulted in the increase of the productive powers. A general allegation as to the increase was not sufficient.

The appeal was heard by L. S. Jackson and Mitter, J. J., who on the 25th November 1868 delivered judgments as follow:—

JACKSON, J.—The Court is unfortunately divided in opinion in this case. I, therefore, state my own view, of course with some degree of diffidence, because I cannot but feel the utmost deference for the opinion of Mr. Justice Dwarkanath Mitter on such questions. At the same time I entertain no doubt upon the matter, and it is one which I have so frequently considered that I feel no hesitation in stating my opinion at once.

I do not at all depart from the view I expressed on the same question in the case of *Dhun Singh Roy* v. *Chunder Kant Mookerjee.** We (L. S. Jackson and Phear, J. J.) there said:—"It may be "considered as fully settled that, where a ryot, in "his answer to a suit for enhancement, pleads "possession for a very long time, and expressly "claims the benefit of the presumption under "Section 4, that is tantamount to his naming the "Permanent Settlement; and so of persons hold-"ing tenures under Section 16." That proposition appears to me still to be quite maintainable in cases where the allegations of the defendant and the proof given make it clear that he relied upon a possession so ancient as to bring him within the terms of Section 4, though he has not expressly referred it to the date of the Permanent Settlement. But where the defendant's allegation, whether oral or written, suggests a commencement of the holding at a much later period and his evidence is of the same character, then I do not think we can give any such effect to his defence, or that the presumption claimed will arise from the proof of twenty years' occupation at a rent unchanged.

It is no doubt the duty of the Court to lay down the proper issues; and, if it appeared that in this case the issue of holding at unvaried rents from the time of the Permanent Settlement properly arose, it would be our duty to remand the case that such issue might be framed and tried; but it seems to me quite impossible, from the tenor of the defendants' title and from their oral examination, to collect any such allegation as that theirs was a holding which had commenced previously to the Permanent Settlement, and had continued from that time to the present day at unchanged rates.

* 4 W. R., Act X Rul., 43.

The defendants merely state that the land has come down to them from their father, by whom it was first brought into cultivation; and I am bound to say that this statement is distinctly confirmed by the testimony of one of the plaintiff's witnesses. I look upon it, I confess, as a very serious matter to decide between landlord and tenant, not merely that the landlord is not entitled to the particular rent which he claims in the suit before the Court, but that the ryot is exempt from any enhancement of his rent for all time to come; and I feel that nothing justifies the Court in carrying exemption one step beyond the limits which the law has provided. For these reasons I think that there is no valid ground of special appeal in the case before us, and that, as far as those grounds are concerned, the decision of the Court below ought to be affirmed. I think that, under the circumstances of this case, I should not say anything on the subject of costs.

MITTER, J.—I am extremely sorry to differ from my learned colleague. The Deputy Collector was wrong, in my opinion, in refusing to lay down an issue upon the point as to whether or not the tenure held by the defendants was protected from enhancement by the provisions of Section 3 of Act X of 1859. There are no such things as pleadings, technically so-called, required by that Act; and it is the duty of the Court itself to lay down all the issues essential to the right determination of the cause, the facts in dispute between the parties being previously ascertained by examining them or their duly authorized agents.* In the present case, however, it appears that the defendants had put in a written statement, and the third paragraph of this written statement distinctly raises the plea that their tenure was not liable to enhancement under the provisions of the law. It is true that the paragraph in question does not contain a specific statement to the effect that the tenure has been held at a uniform rate from the time of the Permanent Settlement; but such a statement is not absolutely necessary, as has been repeatedly held by this Court, in order to entitle a tenant to the benefit of Section 3 of the Act. The said paragraph, however, distinctly states that the tenure is a *kadimi* or ancient tenure, and the provisions of Section 4 and the various rulings of this Court upon that section are expressly set up as a bar to the enhancement sought for by the plaintiff. The words "long before twenty years" appear to have been used merely with reference to the provisions of Section 4; and it would be, in my opinion, altogether inconsistent with the entire context to hold that, by using those words, the defendants intended to say that their tenure had come into existence at a time subsequent to the date of the Permanent Settlement. The Deputy Collector says, "It is to be observed that the witness "Shabrat Ali states that the land was first brought "under cultivation by the defendants' father," and he wishes to infer therefrom that the tenure in question could not have been in existence at the time of the Permanent Settlement. But it is to be observed, in the first place, that it is highly unjust to deprive a party of the opportunity of

* See Sections 64 and 65, Act X of 1859.

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proving a particular point and then to draw unfavourable inferences against him with reference to that point, upon the isolated statement of one of the witnesses examined by him to prove the other points in the cause. Be this as it may, it is perfectly clear that the fact of the lands in dispute having been first brought under cultivation by the father of the defendants is by no means inconsistent with the existence of the tenure at the time of the Permanent Settlement. No pains appear to have been taken by the Deputy Collector to ascertain either from the defendants or from their witnesses as to when it was that the lands were first brought under cultivation by the defendants' father; and it is impossible to say that the period during which the tenure has been held by the defendants, when added to the period during which it was held by their father, may not be equal to the period that had elapsed between the Permanent Settlement and the institution of this suit.

It has been said that the point now raised before us was not urged in the memorandum of appeal filed by the defendants in the lower Appellate Court, the ground taken therein being that the defendants have succeeded in showing that their tenure had been held at a uniform rate for a period of twenty years next before the institution of the suit, and that the presumption arising from that fact in their favour had been no way rebutted by the plaintiff. This statement appears to be correct; but, under the circumstances mentioned above, I think that there has been no fair trial of this case by either of the Courts below. The lower Appellate Court does not appear to have passed any opinion even upon the point that was distinctly raised by the defendants in their memorandum of appeal. The defendants, it appears, had put in their rent receipts for more than twenty years prior to the date of suit, and they had, in their examination before the Deputy Collector, distinctly sworn that they were the receipts of their tenure. It cannot be, therefore, said that the plea taken by them before the Judge was altogether unsupported by the record; and, if the Judge had inquired into that plea, as he was bound to do, it is impossible to say what conclusion he would have arrived at with reference to it. Under these circumstances, I am of opinion that this case has not been properly tried, and that it ought to be, therefore, sent back to the Court of first instance to be tried with reference to the foregoing remarks.

The judgment of Jackson, J., as that of the senior Judge, prevailed.

On the 11th February 1869 a petition of appeal, under Section 15 of the Letters Patent, was filed by the defendant on the following grounds :—

First.—The Court has committed an error in holding that the defendants' allegation suggests a commencement of the holding at a much later period than the Permanent Settlement.

Second.—The Court should have held that the issue of holding from the time of the Permanent Settlement properly arose in this case from the written statement of the defendants and from their oral examination.

Third.—There is nothing in the defendants' statements to rebut, or destroy, or negative the presumption of a holding since the Permanent Settlement, and, therefore, the case should have been remanded.

Fourth.—It has not been found by the first Appellate Court that the productive powers of the land have increased at all from former years. The mere fact of repairing an "ahur" will not entitle the plaintiff to enhance, until it be proved and found that the expense incurred by the zemindar resulted in the increase of the productive powers, by proving actual increase.

On the same day the following order was passed thereon by

L. S. Jackson and Markby, J. J.—No good cause has been made out for allowing this appeal long after the lapse of thirty days. The judgment of both the Judges composing the Division Bench was given in open Court on the 25th November. The party thereupon had his right of appeal, and was bound to present that appeal within thirty days from that date, unless he could show good cause to the contrary. The application must be refused.

A second petition of appeal was presented on the 3rd April 1869, which was in the following terms :—

"That your petitioner was appellant in Special Appeal No. 1208 of 1868 against one Tulsi Ram Sahu and others.

"That the case was heard by a Division Bench of this Hon'ble Court on the 25th November 1868, consisting of Mr. Justice L. S. Jackson and Mr. Justice Mitter, and that there was a difference of opinion between the two learned Judges. The judgment was orally delivered.

"That the decision of Mr. Justice Mitter was in favour of your petitioner, and that of Mr. Justice Jackson against him.

"That the written decision of Mr. Justice Jackson was given in on the 25th January 1869.

"That your petitioner had filed his stamp paper for an attested copy of the judgments of the learned Judges on the 7th December 1868 with a view to file an appeal to the Court at large; and, as Mr. Justice Mitter's decision was not given in, he received attested copies on the 1st February 1869. That, in the meantime, constant applications were made to the officers of the Court for the copy.

"That, on the 11th February, an appeal petition having been drawn out on full stamp, was presented by your petitioner's pleader, Mr. C. Gregory, before Mr. Justice L. S. Jackson's Bench, because His Lordship was one of the Judges who decided the case, and the application was made to him for the admission of the appeal, under the impression that the word "Court" in the rules for admission of appeals to the Court at large was taken to mean any Division Bench.

"That your petitioner submits that the word 'Court' means the Court at large, of which the Hon'ble the Chief Justice is the President.

"That the decision given in on the 25th January 1869 should have been dated on that day, according to the rules laid down in Act VIII of 1859.

"That the order of Mr. Justice Jackson and Mr. Justice Markby is without jurisdiction, and ought not, therefore, to bind the Court of Appeal under Section 15 of the Charter Act.

"That the Court, as distinguished from a Divisional Bench of the Court, has the power to admit your petitioner's appeal.

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"That it is necessary by the rules laid down that the petition should contain the objections to the decision appealed against, stated, and mentioned, and it was thought prudent to obtain a copy of the judgment before an appeal to the Full Court was presented, in order that the objections may be well considered and stated.

"That the judgment of this Court, dated 25th November 1868, and the order of the 11th February, are herewith filed.

"Your petitioner, therefore, humbly prays that the said appeal put in by your petitioner on the 11th February 1869 be considered as in time, or that an order be made for the admission of the said appeal, and your petitioner, as in duty bound, will ever pray."

On the above petition the following order was passed on the 3rd April 1869:—

Peacock, C. J.—As a Division Bench we cannot interfere with the order of Mr. Justice S. Jackson and Mr. Justice Markby. According to my construction of the rule, the application ought to be made to the Appellate Court. The appellant is at liberty to apply to the Appellate Court when it sits. Let this motion be put on the list for the first day on which the Appellate Court sits, and let the pleader on the opposite side have notice.

The final order on the petition was as follows:—

Peacock, C. J., (concurred in by Kemp and Macpherson, J. J.)—We think that the appeal ought to be admitted. Referring to the first section of the Rules of the 5th August 1867, regarding the admission of appeals under Section 15 of the Letters Patent, to which Mr. Gregory has referred, we think that the words "unless the Court in its discretion, on good cause shown, shall grant further time," refer to the High Court, and not to the Division Bench. That being so, the High Court, for the hearing of an appeal of this nature, must consist of a Bench of at least three Judges. That is analogous with the practice laid down in Section 333, Act VIII of 1859, in which it is enacted that "appeals shall be made in the form "of a memorandum, which shall be presented in "the Appellate Court within the period herein-"after specified, unless the appellant shall show "sufficient cause to the satisfaction of the Appel-"late Court for not having presented it within "such limited period."

Upon the refusal of the Registrar to admit the appeal, on the ground of its having been presented beyond time, an application might have been made to the Chief Justice for the appointment of a Division Bench for the purpose of hearing it, as provided by Section 7 of the Rules of August 1867.

The case now comes before the Appellate Court, and it appears to me that the Court in its discretion ought to allow the appeal to be filed. On the Original Side of this Court it has been held that delay in obtaining office copies of the judgment in a case is no ground for postponing the filing of the memorandum of appeal, as the counsel should note the judgment on the brief. On that side of the Court, Judges do not always put in a written judgment; but on this side of the Court, where the first hearing is upon appeal, a written judgment is always put in, in order that it may be transmitted to the Court from which the appeal comes. That being the practice on this side of the Court, it appears to me that, if an appeal is presented within thirty days from the time at which a written judgment is put in, the applicant has a reasonable ground for applying to this Court in its discretion to admit it, even though filed after thirty days from the time when the judgment was delivered orally in Court. The appeal is admitted.

On a subsequent day the appeal was heard by Norman, Bayley, and Hobhouse, J. J.

Mr. G. Gregory, for the appellants, contended that the issue whether or not the defendants were entitled to claim the protection of Act X of 1859, Section 4, was sufficiently raised by the defendants in their written statement and their evidence. He referred to *Bhoyrubnauth Sandyal* v. *Mutty Mundle*,* *Jugmohun Dass* v. *Poornoo Chunder Roy*,† *Nyamut-oollah* v. *Gobind Chunder Dutt*,‡ *Gooroo Dass Mundle* v. *Sheikh Durbaree*,§ *Dhun Singh Roy* v. *Chunder Kant Mookerjee*,|| *Poolin Beharee Sein* v. *Nemaye Chand*,¶ and *Koonwur Raj Coomar Roy* v. *Assa Beebee*.**

Baboo *Ramesh Chandra Mitter*, *contra*.—The defendants had not raised the plea that they were protected under Section 4, Act X of 1859, with sufficient distinctness.

Norman, J.—The question before us is whether the Deputy Collector was wrong in not fixing an issue upon the question whether the tenure held by the defendants is protected from enhancement by the provisions of Section 3, Act X of 1859. That is the way in which the question is stated by Mr. Justice Mitter, and in my opinion it is perfectly and correctly stated.

The right which, in a case like this, a ryot puts forward, is created by the third section of the Act. That section gives to ryots, who hold lands at rates of rent which have not been changed from the time of the Permanent Settlement, the right to receive pattas; or, in other words, to continue to hold at those rates. The issue, then, in a case like this, is "whether the ryot has held at rates which "have not been changed since the Permanent "Settlement." The affirmative of that issue rests on the party who asserts that he possesses that right. In my opinion, the Court is not bound, in any case, to raise or try an issue upon the existence of a right unless the party asserts the existence of such right, and claims to have his title tried.

Many cases have been cited by Mr. Gregory in the course of the argument. In considering the effect of these cases, it is necessary to observe that, in proceedings under Act X of 1859, the issue is raised on the statements of the parties on oath. It is impossible for anybody to speak from his own personal knowledge and observation as to the state of things which existed at the time of the Permanent Settlement. If, therefore, the party setting up a right to hold at fixed rates from the time of the Permanent Settlement alleges facts which show that he means to assert that, according to the best of his knowledge and belief, his rate of rent has not been changed from the Permanent Settlement, or from a time which he may reasonably believe was as remote as the Permanent Settlement, such an allegation is sufficient. The statement is made with as much certainty and positiveness as, looking at the subject with reference to which it is made and the restrictions under which

* W. R., 1864, Act X Rul., 100.
† 3 W. R., Act X Rul., 133.
‡ 4 W. R., Act X Rul., 25.
§ 5 W. R., Act X Rul., 86.
|| 4 W. R., Act X Rul., 49.
¶ 7 W. R., 472.
** 3 W. R., Act X Rul., 170.

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the claimant is placed, the circumstances admit of. Thus, if a man who produced receipts extending over forty or forty-five years alleged that he and his ancestors had held at an unchanged rate for a very long time, and there was no inference that the assertion was not meant to imply that they held from a time as early as the Permanent Settlement, the Courts have treated that as an assertion that he and his ancestors had held at rates which had not been changed since the Permanent Settlement. That assertion was probably made as positively as it was in the power of the ryot to make it. I believe that not one of the cases cited is not capable of that explanation. But the present case is totally different. It is important to see what the claim here is. It is a claim to enhance the rent of the defendants' tenure, upon the ground that the plaintiff has provided means of irrigation of the land by which the productive powers of the land have increased. How is that claim met? It is met by a denial that the productive powers have increased. The defendant makes a further answer in a written statement put in before his examination; he says that "by a fixed hereditary holding "(the words used are *gujasta maurasi*) from "ancient times, more than twenty years, without "change or increase or decrease of rent, this land "has been held." That is the written statement. He does not say as far as he or his father remembered, but "from ancient times more than twenty years," and he does that in order to throw the burden of proof on the plaintiff. That statement was put in on the 4th November.

On the following day he was examined under Section 59, and the issue was fixed as provided by Section 65; the defendant on that occasion did not pretend to say that his predecessors had held at fixed rates from the time of the Permanent Settlement. Nothing of the kind appears to have been alluded to either by himself or his pleader. There is not one word on that point till his cross-examination by the plaintiff's pleader. In answer to that he says, "From the time of my father the "cultivation is *khilmi* (reclaimed) ancestral. From "the year 1262 (1855) the lands have been in my "possession, and I hold receipts for the payment "of rent. Since my jote has been *khilmi* jote, the "lands have been held at one single rate." When were his lands reclaimed? What was the time of his father since which the cultivation was *khilmi?* That was a fact entirely within his own knowledge, and yet no statement was then made which could lead to the inference that the land had been reclaimed, and that his father held the land as reclaimed, from the time of the Permanent Settlement. The case, then, goes to trial without objection on the part of the defendant, on the single issue whether the productive powers of the land had been increased.

The defendant endeavoured to show that his lands were less productive than formerly. What is the evidence as to that? Shabrat, his own witness, in his examination-in-chief, says that, when the cultivation was new in the time of the defendant's father, the production was five or seven maunds per biga, and now it is less. There is no doubt in my mind that the fact that the reclamation of the land by the defendant's father took place in recent times was within the knowledge of the parties present when the issues were fixed, and that no one pretended to say that the reclamation was as ancient as the Permanent Settlement.

I think that the rule ought to be steadily adhered to that, if a party does not assert a title in himself, the Courts ought not to be astute in picking out a title for him. It is a well-settled rule of law that a man cannot plead evidence, and Section 4 merely relates to evidence. It merely declares that "when, in any suit under "this Act, it shall be proved that the rent at "which land is held by a ryot has not been changed "for twenty years before the commencement of "the suit, it shall be presumed that the land has "been held at that rent from the Permanent "Settlement, unless the contrary be shown, or "unless it be proved that such rent was fixed at "some later period."

A man is not at liberty to say, "I have some "evidence" (evidence which is rebuttable) "that "the land was held at fixed rates from the time of "the Permanent Settlement."

Suppose a suit was brought on a bond, and the defendant, instead of saying that he had paid the amount secured by the bond, which would be a matter the truth of which would be within his own knowledge, were to say, "I produce this paper," purporting to be a receipt; "the plaintiff's name is signed on it." That would not be equivalent to saying he had paid the money; it would be no answer to the suit. The defendant would be asking the Court to draw an inference as to a fact, the existence of which he did not venture to assert. I think that the Deputy Collector came to a right conclusion, when he said that "the defendants "have not pleaded a right to hold at fixed rates, on "the ground of the rent having been unchanged "since the Permanent Settlement, but only that "their rent has been unchanged for more than "twenty years;" and that he was right in not trying the truth of an allegation which the defendants did not assert.

Under these circumstances I think that the decision of Mr. Justice Jackson, the senior Judge, is the correct one, and that it must be affirmed with costs.

HOBHOUSE, J.—The plaintiff, in the Court of first instance, sued the defendants, who are the special appellants before us, for arrears of rent upon their tenure for the year 1274 (1867).

The defendants put in a written statement, and one of them gave his deposition on oath in answer to the averment of the plaintiff, and the Court of first instance gave the plaintiff a decree for a certain amount of rent, and declined in the following words to entertain the particular issue, in the matter of which there is now a contention before us. The Court remarks, "As the defendants "have not pleaded a right to hold at fixed rates, on "the ground of the rent having been unchanged "since the date of the Permanent Settlement, but "only that their rent has been unchanged for "more than twenty years, no issue has been fixed "on this point. It is to be observed that their "witness Shabrat Ali states that the land was "first brought under cultivation by defendants' "father." The Court in these terms declined to go into the question as to whether the lands were held at rates which had remained unchanged from the time of the Permanent Settlement.

The case then came, after having passed through the lower Appellate Court, before a Division Bench

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of this Court, in special appeal; and, the senior Judge in that Division Bench having differed from the junior Judge upon the question as to whether any issue arose such as the first Court refused to entertain, his judgment became the judgment of the Court, and is now, under Section 15 of the Charter, in appeal before us.

Mr. Justice Mitter has considered that the question of unchanged rate, from the time of the Permanent Settlement, was raised upon the pleadings, and that the first Court was bound, therefore, to try and determine that question; and the learned Judge would, therefore, have remanded the case for trial of that issue. Mr. Justice Jackson, on the other hand, considered that the issue did not properly arise, and the material part of his judgment may, I think, be found in the following words :— "It is no doubt," the learned Judge remarks, "the duty of the Court to lay down the "proper issues; and, if it appeared that in this case "the issue of holding at unvaried rents from the "time of the Permanent Settlement properly arose, "it would be our duty to remand the case that "such issue might be framed and tried; but it "seems to me quite impossible, from the tenor of "the defendants' title and from their oral exami-"nation, to collect any such allegations as that "theirs was a holding which had commenced pre-"viously to the Permanent Settlement, and had "continued from that time to the present day at "unchanged rates." In these words the learned Judge seems to me to have considered that the issue did not properly arise, because it could not be collected from the tenor of the defendants' title and from their oral examination; and he goes on further to say that it could not be collected from certain evidence given on the part of the defendants to which he refers. The words on which Mr. Gregory, for the appellant, relies as raising the issue in question are thus stated in the written statement of the defendants. The defendants there state that the tenure is not liable to enhancement by reason of its being "a *gujasta maurasi* "tenure from ancient times, for more than twenty "years, without change or increase or decrease of "the rate at which this tenure has been held; "that the cultivation (jote) was ancestral, and has "remained, according to old custom, at one rate; "and, by reason of the tenure being *gujasta mau-"rasi*, the rent is not enhanceable, and the prayer "to enhance is opposed to the provisions of Sec-"tion 4, Act X of 1859." This, in my opinion, is, on the very face of it, a statement somewhat vague in terms; but still, in making that statement, the defendants do point to the provisions of Section 4, Act X of 1859, the terms of which section will be seen to comprehend a tenure which was in existence at the time of the Permanent Settlement; and, if this statement had stood alone and was all that we had to consider in this case, I should have been inclined to say that, having reference to the various precedents, *Bhoyrubnauth Sandyal* v. *Mutty Mundle*,* *Jugmohun Dass* v. *Poornoo Chunder Roy*,† *Nyamutoollah* v. *Gobind Chunder Dutt*,‡ *Dhun Singh Roy* v. *Chunder Kant Mookerjee*,§ *Gooroo Dass Mundle* v. *Sheikh Durbaree*,|| *Poolin Beharee Sein* v. *Nemaye Chand*,¶ and *Koonwur Raj Coomar Roy* v. *Assa Beebee*,* on which Mr. Gregory has relied, there was some indication that the defendants had at one time intended to plead that they held a tenure of the nature contemplated by Section 4. But, whatever the defendants may have intended to plead when they first filed their written statement, I think it is quite clear, from the subsequent proceedings, that they abandoned, if ever they seriously attempted to put forth, any such case as that the tenure existed and was held at one rate of rent from the time of the Permanent Settlement. I observe that the written statement was put in on the 4th November. On the 5th November the defendant was examined, and I understand that in his examination-in-chief he confined himself merely to the statement that the lands had not been improved by the irrigation works put up by the plaintiff, and that no measurement of the lands had been made in his presence; and it was not until he was subjected to cross-examination that he made anything like even an allusion to the existence of his tenure at the time of the Permanent Settlement, and then what he said on that occasion was something very far short of what he had only the day before stated in his written paper. The words he used were these, "From the time of my father this cultivation is "*khilmi*, ancestral. In 1263 (1856) the lands "under cultivation were under my possession, and "I hold receipts for payment of the rents; and, "since my lands had been *khilmi* jote, from that "time one patta or rate has prevailed." This seems to me to be a considerable departure and resiling from the statement he made the day before on paper. Then, it seems to me, as pointed out by the pleader for the respondent, that, in accordance with the provisions of Section 65 of Act X of 1859, it is at any rate principally from the examination of parties that the issues which have to be decided under Act X are to be framed. I do not think that it can be said, as the pleader would have contended, that the written statement should not be taken into consideration at all, because, by the provisions of Section 59, such a statement is receivable in evidence; and it would be absurd to suppose that the legislature, while it provided that such written statements might be placed on the record, could have intended that such statements should not, when on the record, be taken into consideration. However, I think, with reference to the provisions of Section 65, that it was intended that the Revenue Courts, in framing issues, should more particularly look to the examination of the parties themselves. The issues in this case, framed after the examination of the parties, *i. e.*, of the defendants, on the 5th November 1867, was this :—Have the productive powers of the lands been increased by the *ahur*, which the plaintiff set up; and, if so, to what extent? This was the issue which, after the examination of the parties, and in their presence, the Revenue Court laid down, and to this issue the evidence on both sides was directed; and, beyond the vague statement to which I have referred as having been given by the defendant in his examination, there is nothing that has been shown to me which points to the trial of any issue other than that which has been already referred to. Neither is there anything on the record, in the way of protest, on the part of the defendants against

* W. R., 1864, Act X Rul., 100.
† 3 W. R., Act X Rul., 133.
‡ 4 W. R., Act X Rul., 25.
§ 4 W. R., Act X Rul., 43.
|| 5 W. R., Act X Rul., 86.
¶ 7 W. R., 472.

* 3 W. R., Act X Rul., 170.

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this issue, nor in the way of a request from them that any other issue, in addition to that stated, should be entertained and determined by the Court. The case upon the record was closed on the 27th November, and on the 28th November the Court gave judgment upon it. Then on that day, for the first time, there seems to have been something like a suggestion that the Court ought to have tried an issue as regards the existence of the tenure of the Permanent Settlement. This appears in the shape of a petition on the part of the defendant by his mooktear and not verified, the material part of which is couched in these terms, "Though my *gujasta* cultivation is from the time "of the Permanent Settlement, and documentary "evidence has been put in of twenty-nine years, yet, "by reason of its being entered in the written statement, 'more than twenty years,' and not the "words 'Permanent Settlement,' consideration or "issue in respect of the *gujasta* has not been fixed. "The fact is that, when the number of years is "not specified, then when I said 'more than "twenty years,' that is equivalent to having said "100 years, and the Permanent Settlement is in "1202 (1795)." Therefore, the petitioner concludes, by praying that the Judge do conduct, or cause to be conducted, a local investigation, and we may presume that it was a local investigation, amongst other matters, of the question of the existence of this tenure at the time of the Permanent Settlement. Upon this petition the Judge remarked that the case was closed; that he was about to give his decision, and, therefore, he rejected the prayer in the petition; and, thereafter in his judgment, the Judge gives that decision in the matter of this particular issue, which I have before quoted. It seems to me, upon this state of the evidence as it appears upon the record, that, if we may say that there was, in the first instance, something in the written statement of the defendant upon which the issue before us might have been founded, I think we cannot but say, upon examining his own deposition and those of his witnesses, and, upon looking to the conduct of the case on his part in the first Court, that he never did really intend to raise, and did not attempt to raise, until he had been defeated upon the real point, an issue upon the question of the existence of the tenure at the time of the Permanent Settlement; and I am confirmed in this opinion by observing that, when the defendants appealed to the lower Appellate Court, they did not say that an issue had not been framed and tried which ought to have been framed and tried, and did not demand a re-trial on such new issue; but they said that, upon the evidence on the record, this particular fact, in the matter of which they now come before us, had been established. It results from what I have said that I agree with the learned Judge whose decision has prevailed in this case, that the issue did not properly arise, though I do not agree altogether with every reason on which the learned Judge has supported his decision; and, though Mr. Gregory for the special appellant contends that it is not in this way that we are entitled to deal with the judgment now before us, yet I apprehend that the point before us, on which the learned Judges differed, is whether, upon the evidence on the record, the Judge of the first Court was right or wrong, whatever his reasons were, when he decided that this issue did not arise, and could not be decided by him; and I think that, upon this point the learned senior Judge is right when he says that the issue did not arise. I would, therefore, affirm his judgment, and dismiss this appeal with costs.

Bayley, J.—I regret very much to say that I differ from my learned colleagues in the view that I take of this case. I think that the judgment of Mr. Justice Mitter is right, and ought to be affirmed. At this late hour I will not enter into all the details and particulars that we have heard in the course of the argument, but will confine myself to two leading facts in the case which I consider material.

The plaintiff sued to enhance the rent of the defendants by reason of the greater productiveness of the soil, in consequence of certain irrigation works alleged to have been provided by the plaintiff.

The defendants denied that the productiveness in the soil had increased, and made the following written statement in answer to the plaintiff's claim in words which, for exact reference, I read from the Court's paper-book:—"The rate has continued "from long before twenty years, without alteration "or change, at old hereditary rate." Defendants then go on to state in the same written statement, "The former proprietors did not, by reason of the "old hereditary tenure, enhance the rent. Under "such circumstances, plaintiff's suit for enhancement of rent on the basis of the notice is in"admissible under Section 4, Act X of 1859, and "various precedents."

After this written statement was put in, one of the defendants was examined. There the examination-in-chief refers only to the question of the productiveness of the soil. The Court asks the defendant no question as to whether defendant pleaded that his tenure was protected by reason of its existence from the time of the Permanent Settlement or not, but the plaintiff's vakeel asks him some questions to which the defendant answers in the terms given by Mr. Justice Hobhouse. He does not there specifically mention either Section 4, or that he held from the time of the Permanent Settlement, or from more than twenty years. He merely says that the lands are *khilmi* (re-claimed) lands of a hereditary nature, *maurasi*, and from his father's time.

Upon these statements of the defendants the Deputy Collector was of opinion that the plea of exemption from enhancement under the provisions of Sections 3 and 4, Act X of 1859, was not intended to be taken by the defendants, and, therefore, no issue was necessary to be fixed upon this point. I may as well here refer to a petition, dated the 27th November 1867, put in by the defendants, in which they very clearly stated, that, by the use of words like "all along, more than twenty years" they meant to have the benefit of the presumption of Section 4, and that the use of the words "more than twenty years" was equivalent to naming 100 years, and the Permanent Settlement was within 73 years, in 1202 (1795). It is true that this petition seems to have been put in after the evidence had been taken, and when the Deputy Collector was about to pronounce his judgment; but yet I take it as an index to the nature and character of a plea of exemption under Sections 3 and 4, which the defendants really all along

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intended to set up against the plaintiff's claim. Under the provisions of Act X it is not absolutely necessary for a party to plead precisely in the very words of the sections, and it was for some time a question of doubt whether, to entitle a ryot to the benefit of Section 4, it was necessary for him expressly to refer the Permanent Settlement; but the whole current of decisions of our Court has now settled the point that it is not necessary for a ryot expressly to use the very words if he pleads substantially that he has held at one rate from the period of the Permanent Settlement; and, if he proves twenty years' holding at any uniform rate, that will suffice to raise the presumption that he held at one rate from the time of the Permanent Settlement; and it will be then for the other party to rebut the presumption by showing that the rent had varied at some period subsequent to the Permanent Settlement. Now, Section 59 of the Act seems to contemplate that the real facts are to be elicited by the Court from the examination of the parties, and also from the plaint and written statements. In the present case, however, it is clear that there was no examination of the defendant by the Court on the point as to whether the nature of his tenure was such as to bar the plaintiff's suit for enhancement with reference to Sections 3 and 4 of Act X of 1859. Now, from the words in the written statement of the defendants above cited by me, and also from their petition of the 27th November referred to above, it seems to be sufficiently clear that the defendants gave the Court to understand that their tenure had existence from a very long date, and invited an issue on the question whether it was liable to enhancement under the provisions of Sections 3 and 4. It is, however, contended that, when the Deputy Collector declined to raise an issue upon this question, this point was not made a subject of appeal before the lower Appellate Court. But I think that such a point was taken, though not very clearly, in the words where the defendants said that the lower Court was wrong in not allowing them the exemption they sought under the provisions of Section 4. Again, in the third ground of special appeal to this Court, we distinctly find that there was an objection by the defendants that the very issue should have been distinctly raised and tried. It is clear from the judgment of the Deputy Collector that he did not raise and try the issue simply because the defendants said that they held at one rate for more than twenty years instead of saying that they held from the time of the Permanent Settlement, which statement alone, it seems in his opinion, would have entitled the defendants to the benefit of Section 4. The Deputy Collector says, "As the defendants have not pleaded a "right to hold at fixed rents, on the ground of "the rent having been unchanged since the date "of the Permanent Settlement, but only that their "rent has been unchanged for more than twenty "years, no issue has been fixed on this point." As pointed out above, this view is clearly opposed to the whole current of decisions of this Court, which have invariably held that the naming of the Permanent Settlement is not absolutely necessary.

For these reasons I think the defendants in their written statement, and in the petition of 27th November, and in the whole tenor of their answer, gave sufficient means to the Court to raise the issue as to whether their tenure was protected under the provisions of Sections 3 and 4, Act X of 1859.

I concur, therefore, with Mr. Justice Mitter in holding that the Deputy Collector was wrong in not having raised and tried an issue upon that point.

I would accordingly reverse the judgment of the senior Judge, Mr. Justice Jackson, and remand the case to the first Court for determination of the issue above noticed.—*23rd February* 1870.—*Bengal Law Reports, Vol. V, Part XXIV.*

HER MAJESTY'S PRIVY COUNCIL.

[BENGAL CASE.]

Regulation XI of 1825—*Diluviated land—Right of the original proprietor after reflux of the sea or river.*

Where A, the proprietor of an estate on the banks of the Ganges, lost it by the encroachment of the river which wholly washed away the culturable soil, and after the lapse of some years, the land became firm and cultivable as usual in consequence of the retiring of the water, the adjoining proprietor claimed it as if gained by gradual accession—

HELD, *reversing the decision of the High Court at Calcutta, that the 4th section of Regulation XI of* 1825 *did not govern the case, and it should be governed by the general principles of equity.*

HELD, *also, following the decision in* 4 *Moore's Indian Appeals, that the property now being capable of identification, it having been the property of A when it was submerged and never having been abandoned or derelict and having now emerged from the Ganges, is still the property of A.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Lopez *v.* Muddun Mohun Thakoor and others, from the High Court of Judicature at Fort William in Bengal, delivered 11th July 1870.

Present:

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE JAMES.

SIR LAWRENCE PEEL.

THE plaintiff in this case, Felix Lopez, was the proprietor of a very considerable estate, a mouzah, on the banks of the Ganges. By the year 1840, by reason of the continued encroachment of that river, it was wholly submerged, and it was, to adopt an expression used in this class of cases in India, "diluviated;" that is, the surface soil, the culturable soil, was wholly washed away. After the lapse of some years, and after one temporary recession and re-encroachment which has occurred in the

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interval, the water has ultimately retired, and the land, having been for some time in a state described as admitting of only temporary cultivation by hand-sowing, has become hard and firm soil, capable of being cultivated in the usual manner. The plaintiff says, "This "was my property. The Ganges, which swal- "lowed it, has again yielded it up, and I claim "my property, which, having been buried and "lost to sight, has again re-appeared."

The rule of the English law applicable to this case, is thus expressed in a work of great authority, (Hale, 'De Jure Maris,' p. 15): "If a subject hath land adjoining the sea, and "the violence of the sea swallow it up, but so "yet that there be reasonable marks to con- "tinue the notice of it, or, though the marks "be defaced, yet, if by situation and extent of "quantity and boundary on the firm land, the "same can be known, or it be by art or "industry re-gained, the subject doth not lose "his property. If the marks remain or con- "tinue, or the extent can reasonably be certain, "the case is clear." And in another place, p. 17, he writes thus: "But if it be freely left "again by the reflux and recess of the sea, "the owner may have his land as before, for "he cannot lose his property of the soil, "although it for a time becomes part of the "sea, and within the Admiral's jurisdiction "while it so continues."

This principle is a principle not merely of English law, not a principle peculiar to any system of Municipal law, but it is a principle founded in universal law and justice, that is to say, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a volcano, or a field covered by the sea or by a river, the ground, the site, the property, remains in the original owner.

There is, however, another principle recognized in the English law (derived from the Civil law,) which is this,—that where there is an acquisition of land from the sea or a river by *gradual, slow, and imperceptible means*, there, from the supposed necessity of the case, and the difficulty of having to determine, year by year, to whom an inch, or a foot, or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining land, (Lord Yarborough's case, 2 Bligh, N. S., 147). And the converse of that rule was, in the year 1839 held by the English Courts to apply to the case of a similar wearing away of the banks of a navigable river, so that there the owner of the river gained from the land in the same way as the owner of the land had in the former case gained from the sea, (the Hull and Selby Railway case, 5 Meeson and Welsby, 327). To what extent that rule would be carried in this country, if there were existing certain means of identifying the original bounds of the property, by landmarks, by maps, or by a mine under the sea, or other means of that kind, has never been judicially determined.

This principle of law, so far as relates to accretion, has, to some extent, been made part of the positive written law of India, and it is on the operation of such positive written law that the defendants' case is based. This law is to be found in Regulation No. XI of 1825, a Regulation for carrying out the rules to be observed on the determining of claims to lands gained by alluvion, or by the dereliction of a river or the sea. There is a recital in that Regulation as to disputes which had arisen with regard to such claims, and the necessity of having some definite rule laid down with regard to several matters, only one of which is material or relevant to the present case, and that is the case provided for by the 4th section of the Regulation. By that section it is provided that, "when land may be gained by "gradual accession, whether from the recess "of a river or of the sea, it shall be considered "an increment to the tenure of the person to "whose land or estate it is thus annexed, "whether the land be held immediately from "the Government, or from any intermediate "land-owner." And the defendants' contention is that, the plaintiff's land having been wholly submerged, so as to make their (the defendants') land the river boundary, the subsequent recession of the river has caused a gradual accession to their land, and an increment by annexation to their estate, notwithstanding that the land has been re-formed on the ascertainable and ascertained site of the plaintiff's mouzah.

It is to be observed, however, that that clause refers simply to cases of gain of acquisition by means of gradual accession. There are no words which imply the confiscation or destruction, of any private person's property whatever. If a Regulation is to be construed as taking away anybody's property, that intention to take away ought to be expressed in very plain words, or be made out by very plain and necessary implication. The plaintiff here says, "I had "the property. It was my property before it "was covered by the Ganges. It remained my "property after it was submerged by the "Ganges. There was nothing in that state of "things that took it from me and gave it to "the Government. When it emerged, there "was nothing that took it from me and gave "it to any other person." And, in answer to such a claim, it would certainly seem that something more than mere reference to the acquisition of land by increment, by alluvion, or by what other term may be used, would be required in order to enable the owner of one property to take property which had been legally vested in another.

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In truth, when the whole words are looked at, not merely of that clause, but of the whole Regulation, it is quite obvious that what the then legislative authority was dealing with, was the gain which an individual proprietor might make in this way from that which was part of the public territory, the public domain not usable in the ordinary sense, that is to say, the sea belonging to the State, a public river belonging to the State; this was a gift to an individual whose estate lay upon the river or lay upon the sea, a gift to him of that which, by accretion, became valuable and usable out of that which was in a state of nature neither valuable nor usable.

And on the very words of the section itself, if the ownership of the submerged site remained as it was, (and there seems nothing to take it away,) it is difficult to see why a deposit of alluvion directly upon it is not at least as much an accretion and annexation vertically to the site as it would be an accretion and annexation longitudinally to the river frontage of the adjoining property.

If we had then to consider the question for the first time, we should have come to the conclusion that the 4th section did not govern the case, and that the question would have to be determined by the general principles of Equity, to which all cases not in terms provided for are referred by the 11th section. Those principles would not give the plaintiff's property to the defendant. But the question is not raised for the first time. The very point came for consideration in India before a Court comprising Sir Barnes Peacock, Mr. Justice Bayley, and Mr. Justice Kemp; and, after full consideration, it was decided that lands washed away and afterwards re-formed on an old site, which could be clearly recognized, are not lands gained within the meaning of Section 4, Regulation XI of 1825, namely, they do not become the property of the adjoining owner, but remain the property of the original owner.

And the same point arose in a case in this Court of Mussamut Imam Bandi and Wajid Ali Khan, appellants, and Thurgovind Ghose, respondent, reported in 4 Moore's Indian Appeals. It is there said, "The whole of "the district adjoining the land in dispute, "as well as that land itself, is flat, and very "liable to be covered or washed away by the "waters of the Ganges, which river frequently "changes its channel. The land in dispute "was inundated about the year 1787; it "remained covered with water till about 1801, "and then became partly dry, until, in the "year 1814, it was again inundated. After "this period it once again re-appeared above "the surface of the water, and by the year "1820 it became very valuable land." That is a state of things very singularly like what has occurred in this case.

In that case it was held as follows: "The "question, then, is, to whom did this land belong "before the inundation? Whoever was the "owner then remained the owner while it "was covered with water and after it became "dry."

This authority appears to their lordships conclusive in the present case.

In a subsequent case, however, (*Kattemonee Dossee* v. *Ranee Moumohinee Dubee*, '*Weekly Reporter*,' *26th May*, 1865,) it was held by a Court comprising Justices Trevor, Loch, Bayley, and Morgan, that all gradual accessions from the recess of a river or the sea are an increment to the estate to which they are annexed without regard to the site of the increment, and a distinction was taken between the two cases; and it seems to have been considered that the former case did not apply to any case where the property was to be considered as wholly lost and absorbed, and no part of the surface remained capable of identification, where there was a complete diluviation of the usable land and nothing but a useless site left at the bottom of the river. Their lordships, however, are unable to assent to any such distinction between surface and site. The site is the property, and the law knows no difference between a site covered by water and a site covered by crops, provided the ownership of the site be ascertained.

Their lordships, however, desire it to be understood that they do not hold that property absorbed by a sea or a river is, under all circumstances, and after any lapse of time, to be recovered by the old owner. It may well be that it may have been so completely abandoned as to merge again, like any other derelict land, into the public domain, as part of the sea or river of the State, and so liable to the written law as to accretion and annexation.

But in this case not only did the parties themselves take the proper, prudent, and honest means of preventing the necessity of any dispute arising by interchanging the Tanabundee which has been put in evidence, but the plaintiff, as between him and the State, did also take the most effectual means in his power (having the description and measurement of the submerged mouzah recorded, and continuing to pay rent for it) to prevent the possibility of any question of dereliction or abandonment being raised against him. Their lordships are, therefore, of opinion that the property now being capable of identification by means of that Tanabundee and otherwise, the property having been the property of the plaintiff when it was submerged, never having been abandoned or derelict, having now emerged from the Ganges, is still his property; and they will, therefore, recommend to Her Majesty to reverse the decision of the Court from which

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the appeal has come, to affirm the decision of the Principal Sudr Ameen, and that the costs of the litigation both below and here should be given to the appellant, the plaintiff.

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

SCOTT, GREENWAY, AND STRATTON, J. J.

Regulation XXX of 1802—*Refusal by landlord to grant puttah—Right to claim a puttah for a fixed money rent.*

Where A, a Mirassidar, sued B, a Zemindar, to recover possession of lands which he claimed a right to cultivate, of which he was deprived by B, to recover damages sustained in consequence of such dispossession and to compel B to grant a puttah; the Zillah Court decreed possession and damages, and the granting of a puttah for a fixed money rent; and the Provincial Court, on appeal, confirmed the decree as to giving possession and granting at an annual fixed rent, but modified the decree as to damages—

HELD *by the Sudr Court, modifying the decree of the lower Courts, that, though A was entitled to possession of the lands, he was not entitled to receive a puttah for a fixed money rent, and that A was entitled to hold possession of the disputed lands on a puttah defining the rate of division of the produce, which rate was to be determined as prescribed by Section* 9, *Regulation XXX of* 1802.

No. 15 *of* 1812.

—— Zemindar of Ponary *v.* Ramasawmy Iyer.

RAMASAWMY IYER sued the Zemindar of Ponary, in the Zillah Court of Chingleput, to recover possession of forty-five cawnies of nunjah arable land, which he claimed a right to cultivate, under a mirassi tenure, of which he had been deprived, by the said Zemindar. Ramasawmy Iyer further sued him to recover damages sustained by him in consequence of his being dispossessed of the lands in question, and to compel the said Zemindar to grant him a lease or puttah for the said lands under the provisions of Section 9, Regulation XXX of 1802; a puttah having been altogether refused to him by the said Zemindar. The Zillah Court adjudged that Ramasawmy Iyer should recover possession of the lands sued for; that the Zemindar should, under the provisions of Section 9, Regulation XXX of 1802, grant a puttah for the lands in question, at the rate of Pagodas 60-6-16, the beriz fixed by the curnum; and that the said Zemindar should be liable for the sum of Pagodas 74 as damages, together with all costs of suit.

The Zemindar appealed therefrom to the Provincial Court for the Centre Division, who adjudged that Ramasawmy Iyer was entitled to recover possession of the lands in question, and to receive a puttah for them from the Zemindar; that the puttah should be for a money rent, agreeably to the decree of the Zillah Judge, at an annual fixed beriz of Star Pagodas 60-6-16; which amount, it was stated to have been proved, was assessed on the lands in question, and was paid by the respondent to the Government, for them, in the year Roudy; and that the Zemindar should pay damages Star Pagodas 55—with Star Pagodas 6-11 interest thereon, and the further sum of Pagodas 55, for damages on account of Fusly 1219, together with costs.

From this decree the Zemindar prayed the Court of Sudr Udalut to admit a special appeal; and the Court, seeing reasons to doubt the correctness of the grounds, upon which the Provincial Court had determined the question, concerning the rate of assessment to be fixed on the lands, and the kind of puttah which Ramasawmy Iyer was adjudged to be entitled to demand from the Zemindar, admitted a special appeal.

In this case, the questions for decision were simply, whether the Zemindar offered to the respondent, a legal puttah, in the mode required by the provisions of Regulation XXX of 1802, and became, by the respondent's refusal to take such puttah, entitled to grant his lands to other persons; or, whether the Zemindar, by refusing to grant a puttah, as required by Section 14, Regulation XXV of 1802, had rendered himself liable to be sued for damages.

That the respondent made several tenders, for the rents of the lands in question, was satisfactorily established. His proposals were perfectly distinct, and it was for the appellant, if he thought proper, to reject either, or all the terms offered; but it was at the same time incumbent upon him to tender to the respondent a puttah containing such terms, as he, the appellant, might consider to be reasonable. No evidence whatever was produced to show that he made such tender; and he, therefore, rendered himself liable to all the consequences of refusing to grant a puttah.

The Zillah and Provincial Courts erred, in declaring the respondent entitled to receive from the appellant, a puttah for a money rent, at an annual fixed beriz of Star Pagodas 60-6-16. There was not a tittle of evidence to show that any such right existed on the part of the respondent. On the contrary, all the evidence taken regarding the assessment of the lands showed that it was not fixed, but derived from a division of the produce, which must fluctuate with the seasons, and the commutation price of which must be influenced by its plenty or scarcity.

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It was not for the Courts to interfere in determining the rate at which, the rate in grain, shall be commuted for a payment in money. This was a point clearly left to be settled by the parties themselves; and, in adjusting the rate, each party would consult his own interest—the Zemindar, in avoiding the expense, risk, and trouble of ascertaining, receiving, keeping, and disposing of his share of the grain; and the cultivator, in endeavouring to secure a reasonable profit for the expense, risk, and trouble, from which he relieves the Zemindar. When the rate shall be settled by a written agreement, the Courts may be called upon to enforce it.

In the present case, it was clear that a fixed beriz of Star Pagodas 60-6-16, for the forty-five cawnies of land, would not be equitable; for Ramasawmy Iyer himself offered a rent of Pagodas 81 for the same land. To fix the rent at the former amount, therefore, would be to punish the Zemindar, by a permanent diminution of his property; while all that could, in justice, be required of him, was a compensation to the respondent, for the loss which he sustained.

The Court, therefore, confirmed that part of the Provincial Court's decree, which adjudged to the respondent, the right to hold possession of the lands in question; and set aside that part of the said decree, which declared the respondent entitled to receive from the appellant, a puttah for a money rent at an annual fixed beriz of Star Pagodas 60-6-16.

It was, therefore, adjudged that, the respondent, was entitled to hold possession of the forty-five cawnies of land in question, on a puttah, defining the rate of division of the produce; which rate, as prescribed by Section 9, Regulation XXX of 1802, was to be determined, according to the rates prevailing, in the year preceding the assessment of the permanent jumma, on those lands; or, if those rates were not ascertainable, according to the rates established for lands of the same description and quality.

And that no dispute might hereafter arise regarding the rates of division of the produce of the lands in question, the Court adjudged that the said rates should be determined by the Zillah Judge of Chingleput, who should take the evidence of the Curnum in open Court, before the parties or their vakeels, and that he should certify the same under his official seal and signature at the foot of the copy of the decree sent to be executed, and at the foot of the copy given to each party.

The Court, unable to discover the grounds upon which the Provincial Court considered the damages awarded by the Zillah Judge to be too great, reversed that part of their decree which related to the damages in question, and adjudged that the appellant should pay to the respondent damages, at the rate of Pagodas 74 per annum, as decreed by the Zillah Judge, for the time during which the said respondent was kept out of possession of the lands in question; subject, however, to such deduction as might appear equitable for the difference between the amount of Pagodas 60-6-16, which the respondent was understood to have paid annually under the decree of the Provincial Court, from the time of its being carried into execution, and the amount due to the said appellant, upon an examination of the Curnum's accounts according to the principles here declared.

And the Court further ordered that each party should pay his own costs in this Court.

SCOTT, GREENWAY, AND STRATTON, J. J.

Right of a Zemindar to exact payment of money or tax.

Where A, a firewood merchant, brought a suit againt B, a Zemindar, to establish his right to cut firewood in the jungles within the zemindary, the Zillah and Provincial Courts decreed in favour of A—

HELD, *confirming the decrees of the lower Courts, that B was only entitled to exercise the rights which the Government had been exercising before the permanent settlement; and that, as there was no proof of the Government having, before the permanent settlement, exacted any payment for cutting firewood, B was not competent to do so.*

No. 10 *of* 1814.

THIS suit was instituted in the Zillah Court of Masulipatam against the Zemindar of Devee, to establish a claim set up by the plaintiffs, (firewood merchants of Masulipatam,) to the privilege of cutting firewood in the jungles of Devee, without paying any consideration to the Zemindar; and also, to recover the sum levied, on this account, by the Zemindar, together with damages. The Zillah Court adjudged to the plaintiffs the privilege claimed by them and 1 rupee damages, each party paying their costs respectively.

On the Zemindar appealing to the Provincial Court for the Northern Division, they confirmed the decision of the Zillah Court, except that part of it which awarded damages to the plaintiffs.

The Zemindar dying, his brother and heir appealed to the Court of Sudr Udalut, who observed that the Zemindar contended that the decrees of the lower Courts infringed the rights vested in him by the *sunnud-i-milkeut-i-istimrar* and by the Regulations of the Government; and, in support of the claim advanced by him, he cited the instance of a Zemindar, in the vicinity of St. Thomas' Mount, who demanded a fanam for each cartload of gravel taken from his estate, which demand was complied

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with, even by the Government itself; although it had never been made before the introduction of the Permanent Assessment. The appellant further cited a decree of the Zillah Court of Rajahmundry.

It was properly remarked by the Zillah Judge, that a decree of the Court of Rajahmundry was not a standard, by which he was bound to regulate his judgment; and that the case cited by the appellant, of the demand made by a Zemindar, in the neighbourhood of St. Thomas' Mount, had not been litigated. If, therefore, the circumstances of the case above mentioned, had been before the Court, they could have exhibited nothing more than a compromise between the parties, which it was clear, could not afford any guide to the Courts in the decision of the present question.

The determination of the present question rested upon very simple grounds; and must follow the usage which prevailed before the introduction of the Permanent Assessment. By the Act of Permanent Settlement, the Government transferred to Zemindars, (with certain specified exceptions,) the proprietary right exercised by itself. It could not do more, without infringing the rights of others. All usages which are not specially abrogated by the Regulations, must be held to be confirmed; and if, previously to the introduction of the Permanent Assessment, no payment was exacted by the Government, for firewood cut in the jungles of Devee, none can be exacted by the Zemindar. But, it was not pretended that the Government made an exaction of this nature, and, therefore, the Zemindar was not entitled to make one.

The Court, therefore, dismissed the appeal, and, confirming the decree of the Provincial Court, directed the appellant to pay all costs.

Scott and Greenway, J. J.

Regulation XXVIII of 1802—Non-payment of rent by a lessee—Right of a Zemindar to resume in case of default.

Where A, a lessee of B, a Zemindar, brought a suit to recover damages for resumption of the village leased to A, on the ground of non-payment of rent, it appeared that B did not attempt to realize the arrears either by distraint of A's personal property or arresting the person of A, before resuming the village; but A did not show that he had any personal property from which B could have realized the money—

Held, *reversing the decision of the Provincial Court, that the attachment by B was justifiable under the circumstances, and that A was not entitled to any indemnification for being ousted from his farm.*

No. 15 *of* 1814.

This suit was instituted in the Zillah Court of Masulipatam, against the Zemindar of Charmahal, for the recovery of the sum of Madras Pagodas 1,03,100, on account of the Zemindar's resumption of the lease of the Charmahal District from the defendant, for eight years, from Fusly 1213 to Fusly 1220 inclusive.

The Zillah Court adjudged that the plaintiff, having failed to fulfil his engagements with the defendant, had, by such failure, forfeited his rent, and the defendant had, therefore, a right to resume the district. The plaintiff's claim to restoration of the rent, or to any indemnification for its resumption, was accordingly disallowed, as altogether groundless. The Zillah Court also disallowed the sum of Pagodas 10,300, claimed under Section 14, Regulation XXX of 1802, on account of the defendant's refusal to grant receipts, for monies paid by the plaintiff; and of the sum of 8,100 pagodas claimed by the plaintiff, as having been paid to the defendant, over and above the stipulated manoovurty. But the Zillah Court, after a minute examination of the accounts of the parties, adjudged the defendant to pay to the plaintiff the sum of Pagodas 6,300-8-11. The Zillah Court further adjudged interest on the sum above mentioned, at the rate of twelve per cent. per annum, from the date of the plaint in the Zillah Court to the date of the decree; and the reason assigned was that it was difficult to fix any other date for the commencement of interest. On appeal, the Provincial Court adjudged the Zemindar to pay Pagodas 16,827-9-9, as an indemnification for withholding the rent, for the term which it had to run, six years; and, in the adjustment of accounts, they allowed him credit for Pagodas 3,450, making, with interest, a total of Pagodas 21,215-10-6, payable by the said Zemindar.

From this decision, the Zemindar appealed to the Sudr Court. Regulation XXVIII of 1802 prescribes the course to be pursued, for the realization of arrears of rent or revenue, due to Zemindars, by dependent Talookdar and under-tenants, of other descriptions. The course prescribed is briefly as follows. In cases wherein an arrear cannot be realized, by distraining the personal property of the defaulter or his sureties, the Zemindar has the power of causing the immediate arrest of the defaulter's person; and, if the arrear be not immediately discharged, the Zemindar has authority to attach the farm or other tenure of the defaulter, and to manage it by his, the Zemindar's, own agents, until the rent due, and the further rent which may become due after the attachment, with interest thereon, shall be liquidated. If the defaulter make good the arrear, with interest, at any time within the current year, the attachment is to be withdrawn; and an account rendered of the receipts and disbursements, during the continuance of such attachment. When arrears are not liquidated within the current year, the Zemindar has power to

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make, at the commencement of the ensuing year, such provision for the receipt of the rents, from the lands tenanted by the defaulter, as he may judge proper, consistently with the rights of the other persons concerned; and, when the defaulter may be a lease-holder, or other tenant, having right of occupancy only, during payment of certain rents, without right of property or possession, the Zemindar is at liberty to oust the defaulting tenant, from the tenure; and, in this case, he has authority to act, without application to a Court of Justice.

In the case under consideration, the original defendant did not follow the course prescribed. He omitted altogether the preliminary steps of distraint and sale of the personal property, and of the person of the defaulter, and proceeded, at once, to attach the farm. And the plaintiff, considering this attachment as an actual and final resumption of the farm immediately instituted this suit, for the recovery of damages, sustained by him, in consequence of such resumption, together with other claims.

If the plaintiff had, in the first instance, limited his suit to a claim for damages, against the Zemindar, for the irregular attachment of the farm, he must, as a matter of course, have been immediately re-placed in possession of it, on paying up the arrears, which might then be claimed, as due, by the Collector, and he might at his leisure have sued the Zemindar for the recovery of his other claims. This mode of proceeding would have been simple, and unattended with any difficulty, in the decision of the matters at issue, between the parties. But the course pursued by the plaintiff had an inevitable tendency, and had, in fact, operated to prolong the grievance, for which he sought, and might have obtained, immediate redress.

Whether the attachment took place on the 10th December 1805, as averred by the plaintiff, or whether it took place on the 14th December, as averred by the defendant, it was clear that a part of the October and the whole of the November kists were then due. It was obvious, therefore, that the plaintiff, by omitting to discharge these arrears, had rendered his farm liable to ultimate attachment. The defendant pleaded the utter insufficiency of the plaintiff's personal property, to make good the arrear, as his reason for proceeding, at once, to attachment; and, as there was abundant evidence, in the record, to show that considerable portions of the zemindary had been repeatedly attached, by the Collector, on account of failures in the regular discharge of the kists, it must be admitted, that the defendant had some reason to apprehend that his possession of the zemindary was endangered by the plaintiff's remissness. The defendant's attachment of the farm, in the first instance, was no doubt irregular; but the plaintiff had failed to show that he was in possession of personal property sufficient to make good the arrear, and the defendant's omission to arrest his person previously to the attachment, was a deviation from the prescribed course, which, though irregular, could not be considered as having subjected the plaintiff to any loss. The plaintiff had still the option of discharging the arrear, when the attachment must have been withdrawn. His ability to discharge the arrear could not possibly be diminished by the defendant's omission of the previous form of arrest; and he had no right to presume, as he did presume, that the attachment of the farm was intended as a final resumption.

The plaintiff's allegation that, at the time when the attachment was made, the defendant had received more than he was entitled to receive from him, would, in this case, avail him nothing. By the terms of the engagement, he was bound to discharge the kists, direct to the Collector, as well as to pay certain sums to the Zemindar. His payments, on these two accounts, therefore, formed separate and distinct questions. He could not be allowed to claim his surplus payments to one, as a set-off against the balance, due to the other; except in a final adjustment of accounts, at the expiration of the lease.

In this view of the case, therefore, the Court were of opinion, that the plaintiff's failure, in the payment of the kists, to the Collector, rendered his farm liable to attachment; and that the attachment, though irregular in the mode in which it was made, was, on the whole, justifiable.

The next point for consideration was, whether the defendant was justified, in proceeding to oust the plaintiff, from his tenure. Although the recovery of the farm was one of the ostensible objects of the suit, it did not appear that the plaintiff ever offered to discharge the arrears of revenue, which were outstanding, against the zemindary. He rested his claim, to re-possession, solely on the ground, that on an adjustment of accounts, between him and the Zemindar, the balance would be found considerably in his favour. This would have been a good plea, if, by the terms of engagement, the sums which he paid to the Zemindar could be considered as payments on account of the Government revenue. But, as stated before, the plaintiff was bound to pay the Government revenue, direct to the Collector, according to the established kists; and his payments, to the Zemindar, were, altogether, on a separate account. It would have been a good plea, also, if the Zemindar had attached the farm, on the grounds of an alleged failure, on the part of the plaintiff, to make him certain payments to which he was bound, by the terms of his agreement. But the case was altogether different; and he could only be entitled to restitution, by discharging, or offering to discharge,

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the outstanding demands of the Collector, of the zemindary, before the expiration of the fusly. As he failed to do this, the Court were of opinion, that the defendant was entitled to oust him from his farm.

On these grounds, the Court did not consider the plaintiff to be entitled to any indemnification, for being ousted from his farm; and they accordingly set aside so much of the Provincial Court's decree, as awarded to the plaintiff, the sum of Pagodas 16,827-9-9, on this account.

With respect to the claim for Pagodas 10,000, the estimated profit, of which the plaintiff alleged he was deprived, by the authorized interference, of the defendant, between him and the ryots, and the claim for the Pagodas 13,000, on account of the defendant's refusal to grant receipts, for monies paid by the plaintiff, the Court entirely concurred in the judgment of the lower Courts, by which those claims were rejected.

With regard to the remaining claim of Pagodas 8,100, the amount stated to have been paid to, or on account of, the defendant, in Fuslies 1213, 1214, and 1215, over and above the sum stipulated as manoovurty, the Court observed that, in the adjustment of accounts, between the parties, the Zillah Court had considered the lease as having terminated with Fusly 1214. There was no doubt, that, under the provisions of Regulation XXVIII of 1802, the plaintiff was entitled to the benefit of the lease, for the Fusly 1215, until the expiration of which, he could not finally be ousted. In this respect, therefore, the adjustment of accounts was defective; but the evidence in the record did not enable the Court to remedy the defect, there being no account of the actual receipts and disbursements in Fusly 1215, after the farm had been attached, by the Zemindar.

The Provincial Court were, therefore, directed to proceed to an adjustment of the accounts of the lease, for Fusly 1215, by calling upon the respondent for a statement, of the receipts and disbursements, in the zemindary, previous to the attachment; and, upon the appellant for a statement, of the receipts and disbursements, subsequent to the attachment, up to the end of the said fusly; and, after duly investigating these accounts, and having adjusted them, to cause the appellant, or the respondent, to pay such sums as might appear to be due, by the one to the other, certifying such adjustment, for the information of this Court.

SEASON REPORT.

REMARKS ON THE SEASON.

Northern Section.—The rainfall was scanty and inadequate for purposes of cultivation.

Ganjam.—In parts of Ganjam *paddy* and *gingelly* were sown, and the standing *sugarcane* and *cotton* crops were in good condition. In the Berhampore and Chicacole Taluks *summer gingelly* was harvested, but yielded only half a crop.

Vizagapatam.—In Vizagapatam *sugarcane* was largely cultivated; *cotton* and *gingelly* also were sown, but not so extensively as *sugarcane.*

Godavery.—The wells dug in the sub-division of the Godavery District were highly beneficial, and early rains were expected from the state of the weather. Slight freshes passed down the Yeleru, and supplies were received in most of the tanks dependent thereon; but, on the whole, the inconvenience from the want of rain had not abated, and in the upland taluks of the district considerable difficulty was experienced from the scarcity of pasture and water. All the canals, with the exception of the Ellore and part of the Narsapur Channel, were closed, and cultivation was confined to the formation of seed-beds and the ploughing of dry fields in a few favoured localities. *Summer paddy, lamp-oil seed,* and *cotton* were harvested, and the latter, too, yielded a good out-turn.

Kistna.—In Kistna the *castor-oil* and *indigo* crops sown last year were being harvested.

Nellore.—In Nellore, *nallavari* and *kasavari* were harvested, and *indigo, salupu jonna,* and *yerra jonna* were sown.

Prices rose in Nellore and Vizagapatam. In Ganjam and Kistna they were almost stationary, and in Godavery they fell slightly.

Cholera broke out twice in the Godavery District, and, though not of a virulent type, was generally prevalent. In the other districts there was no cholera; but public health, except in Ganjam, suffered more or less from small-pox and fever.

There was no cattle disease in Ganjam. Its general prevalence was reported from all the other districts.

Ceded Districts.—There was a general fall of rain, but not such as to add materially to the supplies in tanks.

Cuddapah.—There was no actual cultivation during the month in Cuddapah, and agricultural operations were restricted to the preparation of land for the *mungary* or early cultivation. Standing crops were tolerably good with a few exceptions. *Paddy, indigo,* and *cholum* were harvested over a limited area, but with indifferent results.

Bellary.—Ryots began cultivation in Bellary, but not so extensively as would have been the case if the rainfall had been heavier.

Kurnool.—In the Nundial and Cumbum Taluks of the Kurnool District *sugarcane* was planted, and in Ramalkotta second *crop paddy* was cut.

The price of *cotton* doubled, while that of the staple grains exhibited a slight fall in Cuddapah.

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In the other two districts prices remained almost stationary.

Public health was good in Bellary. It suffered from small-pox and fever in Kurnool, and from cholera also to a small extent in Cuddapah. In the last-named district cholera pills were administered with some success.

Cattle suffered from disease over the greater portion of this section.

East Centre.—The rains were general, though scanty, in North and South Arcot. In Madras there was no rain, with the exception of a slight fall in the town of Conjeveram.

Madras.—In Madras the absence of timely rains impeded progress in cultivation, and the standing *navarai* crops were withering from drought all over the district.

North Arcot.—In the Wandewash Taluk, of the North Arcot District, there was no cultivation. In the other taluks some progress was made under wells and river and channel springs. *Nunjah* crops were withering from insufficiency of water in the Chittoor, Gudiattum, Polur, and Wandewash Taluks, but elsewhere doing tolerably well. *Gingelly-seed, chilly, raggy*, and *navarai paddy* were harvested, but none of them yielded more than a three-quarter crop.

South Arcot.—In South Arcot, lands within the reach of well-irrigation were sown with *car paddy*; and *tobacco, indigo*, and *gingelly-seeds* were harvested. Over the greater part of the district both men and cattle experienced considerable difficulty from the insufficiency of water for drinking purposes.

Prices slightly fluctuated in Madras and South Arcot, and remained almost stationary in North Arcot.

Cholera prevailed in all the districts of this section. It was least virulent in South Arcot. There was also some fever, but not of a malignant type.

Cattle were free from disease in Madras, but suffered severely in the other two districts.

Cauvery.—There was a very slight fall of rain, and freshes had only just commenced to pass down the Cauvery and Coleroon.

Tanjore.—*Gingelly-oil seed* and *chillies* were cultivated in some parts of the Tanjore District. Tanks were for the most part dry.

Trichinopoly.—In Trichinopoly, *valan paddy* was reaped, but no commencement had as yet been made in the preparation of the soil for fresh cultivation.

Prices remained the same as in the preceding month.

There was no cholera, and public health was, on the whole, good.

Cattle disease was reported to exist in parts of the Tanjore District.

Southern Section.—Slight showers fell in this section.

Madura.—The river Vigay, in Madura, received o freshes; tanks in many places were quite dry, and the standing *nunjah* crops were drooping for want of water. A few of the dry grains and *cotton* and *indigo* were, notwithstanding, cultivated in parts of the district.

Tinnevelly.—Cultivation was very much retarded in Tinnevelly owing to the inadequacy of the water-supply for irrigation. A severe storm passed over the Sattur Taluk on the 22nd of the month, and caused damage to houses, avenue trees, &c.

There was a slight fall in prices in Tinnevelly. In the other districts they were stationary.

Cholera was prevalent, but it was not of a virulent type.

Cattle preserved good health, but suffered severely from want of pasture and water in parts of Madura.

West Centre.—The rains that fell in Coimbatore and Salem were scanty and unequally distributed.

Coimbatore.—In parts of the Coimbatore District, where the rains were sufficiently heavy, lands were ploughed, *cumboo* and *raggy* were sown, and in some of the garden lands *chilly* and *raggy* plants were transplanted. Water in wells was diminishing, and *plantains, betel vines*, and *sugarcane* under the Noyel River were drooping.

Neilgherries.—On the Neilgherries, *coffee plantations, potatoe* plants, *corally, samai*, and *raggy* were thriving, and *ganjay, wheat*, and *keeray* were sown.

Salem.—Tanks in the Trichengode, Attur, Oossoor, Tripatore, and Kistnagherry Taluks of the Salem District, received from one and a half to two months' supply of water. Cultivation of dry grains under wells commenced, and the standing crops were in good condition. The yield of the *cotton* crop in Trichengode was very poor owing to the absence of timely rains. Heavy rain accompanied by a violent gale fell in the town of Tripatore on the 20th and 22nd of the month, causing great damage to the avenue trees.

Prices fluctuated in Salem, and rose slightly in Coimbatore.

Fever and cholera were in existence in both the districts of Salem and Coimbatore, but there was no serious loss of life.

Cattle suffered from disease and also from the scarcity of pasture and water in Salem.

West.—There was a general, though not abundant, fall of rain in South Canara. The third-crop rice and dry grains were harvested, and ryots commenced the cultivation of first-crop rice.

The prices of *rice* and *wheat* rose a little; those of the other articles were stationary.

Both men and cattle were generally healthy.

Malabar.—The sowing of the kanny or first crop is nearly completed in most of the taluks. There were very few showers about the beginning of the month, but latterly the rainfall was favourable. Fever and small-pox are on the decrease. Prices of grain have not fluctuated to any material extent.

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Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency for the Month of May 1870, *Fusly* 1279.

DISTRICTS.		2nd sort Rice. Fusly 1278	2nd sort Rice. Fusly 1279	2nd sort Paddy. Fusly 1278	2nd sort Paddy. Fusly 1279	Cholum. Fusly 1278	Cholum. Fusly 1279	Raggy. Fusly 1278	Raggy. Fusly 1279	Horse Gram. Fusly 1278	Horse Gram. Fusly 1279	Sea Salt. Fusly 1278	Sea Salt. Fusly 1279	Rainfall. Northern Section.	Rainfall. Southern Section.	Rainfall. Eastern Section.	Rainfall. Western Section.	Rainfall. Average.
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam.........	289	255	116	106	213	186	242	132	179	167	290	320	0·10	0·40	...	1·0	0·37
	Vizagapatam..	380	305	168	129	222	165	217	155	291	169	252	316	1·40	0·50	0·20	1·25	0·83
	Godavery.......	284	240	136	105	165	127	160	118	196	183	238	274	0·75	...	0·14	0·20	0·27
	Kistna...........	350	340	161	153	148	203	157	160	217	216	278	343	0·89	0·85	0·13	1·10	0·74
	Nellore	363	350	172	166	155	182	136	153	203	256	263	324	0·90	...	0·70	0·77	0·59
Ceded Districts.	Cuddapah......	407	419	184	188	174	199	165	175	189	225	297	356	1·75	1·26	0·15	1·47	1·16
	Bellary...... ...	356	377	148	162	124	178	110	152	147	214	363	429	0·81	1·16	2·53	2·05	1·63
	Kurnool........	443	403	180	176	148	196	151	183	211	244	331	363	0·50	0·80	0·80	0·90	0·75
East Centre.	Madras.........	444	345	198	147	240	221	245	205	265	254	267	296	0·03	...	...	0·20	0·05
	North Arcot. .	395	331	171	142	201	193	234	168	183	172	241	297	2·20	2·20	1·0	1·80	1·80
	South Arcot. .	401	289	166	137	220	140	214	156	215	169	280	326	0·52	0·05	...	0·70	0·31
Cauvery.	Tanjore.........	349	271	159	133	194	137	170	137	185	191	254	303	0·40	...	...	...	0·10
	Trichinopoly..	369	293	162	132	159	135	191	141	204	157	265	827	0·81	...	...	1·27	0·52
Southern Section.	Madura.........	405	350	183	168	194	200	180	144	192	128	288	333	1·07	1·50	1·70	0·47	1·18
	Tinnevelly.	391	884	184	176	...	163	195	183	201	207	286	344	0·52	0·30	...	0·40	0·30
West Centre.	Coimbatore ...	442	405	219	199	284	252	225	192	258	167	338	382	3·15	0·28	2·18	0·68	1·57
	Neilgherries...	533	582	...	...	291	320	246	291	267	267	...	...	...	...	3·09	1·55	2·82
	Salem..........	375	335	164	147	203	173	177	148	181	141	300	347	2·96	1·72	3·31	0·92	2·22
West......	South Canara.	350	367	151	166	...	...	222	231	262	266	254	284	0·85	0·95	0·01	1·75	0·76
	Malabar.......	441	412	203	196	...	...	194	154	278	251	290	339	13·86	9·43	13·88	16·24	3·69

Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of May 1870, *Fusly* 1279.

	DISTRICTS.	Cotton. Fusly 1278. Extent.	Cotton. Fusly 1278. Assessment.	Cotton. Fusly 1279. Extent.	Cotton. Fusly 1279. Assessment.	Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo. Fusly 1278. Extent.	Indigo. Fusly 1278. Assessment.	Indigo. Fusly 1279. Extent.	Indigo. Fusly 1279. Assessment.	Market rate of Cake Indigo per Maund of 25 lbs.
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	365	391	84	98	158	......	......	......	......	75
2	Vizagapatam ...	1,984	2,358	630	558	162	181	800	19	100	49
3	Godavery ...	......	......	13	38	167	......	......	......	......	68
4	Kistna ...	......	......	......	......	159	......	......	......	......	56
5	Nellore ...	......	......	8	15	160	1,151	2,803	2,156	5,690	51
6	Cuddapah ...	95	44	144	47	120 to 240	670	3,068	1,434	7,039	40 to 70
7	Bellary ...	......	......	24	11	163	497	1,800	194	219	64
8	Kurnool ...	......	......	......	......	154	......	......	......	......	56
9	Madras ...	......	......	......	......	100	107	509	92	250	47
10	North Arcot ...	......	......	......	......	150	1,240	2,898	3,365	6,076	50
11	South Arcot ...	36	78	103	184	133	1,951	4,101	2,976	4,572	43
12	Tanjore ...	31	62	1,227	1,666	155	65	77	822	2,007	25
13	Trichinopoly ...	......	......	292	173	129	......	......	......	......	14
14	Madura ...	950	1,123	442	629	100	2	6	6	20	40
15	Tinnevelly ...	14	14	......	......	158	......	......	......	......	31
16	Coimbatore ...	1,385	931	291	184	132	......	......	......	......	29
17	Salem ...	1,329	2,128	365	632	193	10	21	114	255	36
	Total...	6,189	7,129	3,673	4,225	......	5,874	16,083	11,178	26,228	......

Revenue Board Office,
Madras, 24*th June* 1870.

(Signed) J. GROSE,
Acting Secretary.

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ACT OF THE GOVERNMENT OF INDIA.

Act No. XII. of 1870.

THE NATIVE PASSENGER SHIPS' ACT, 1870.

An Act for the regulation of Native Passenger Ships and of Steam Vessels intended to convey passengers on coasting voyages.

Preamble.

Whereas abuses have occurred in the over-crowding of ships conveying native passengers between ports and places in India, and ports and places in the Red Sea or Persian Gulf; and whereas similar abuses have also occurred in the case of ships commanded or owned by subjects of Her Majesty and conveying native passengers between other ports and places situate east of the Cape of Good Hope and ports and places in the Red Sea or Persian Gulf; and whereas it is expedient to prevent such abuses, and to provide for the regulation of all such ships as aforesaid which shall depart from, or arrive at, any of the said ports or places in India, and also for the regulation of steam vessels intended to carry passengers on coasting voyages; It is hereby enacted as follows:—

Chapter I.

Preliminary.

Short title.

1. This Act may be called "The Native Passenger Ships' Act, 1870."

Extent of Act.

2. This Act extends to all subjects of Her Majesty whether within British India or within the dominions of Princes of States in India in alliance with Her Majesty, and to all persons being native Indian subjects of Her Majesty without and beyond British India.

Act not to apply to ships-of-war, &c., any foreign Prince or to sea-going steam vessels conveying public mails.

Nothing in this Act applies to any ship-of-war or transport belonging to, or in the service of, Her Majesty, or to any ship-of-war belonging to or State, or to any ship under contract with the Government of any European State, or to any sea-going steam vessel employed in the conveyance of the public mails under a contract.

Repeal of Act.

3. Act No. XXI of 1858 *(for the regulation of Native Passenger Ships, and of Steam Vessels intended to convey passengers on coasting voyages)* is hereby repealed; and Section 1 of Act No. II of 1860 *(to amend the law relating to the carriage of passengers by sea)* shall be read as if, for the words and figures "Act XXI of 1858," the words and figures "The Native Passenger Ships' Act, 1870," were substituted.

Interpretation clause, "Magistrate."

4. In this Act—

The word "Magistrate" means a person exercising powers not inferior to those of a Subordinate Magistrate of the 1st Class, and includes a Justice of the Peace, and, at the port of Aden, the Political Resident and his Assistants:

"Local Government."

The words "Local Government" mean the person or persons for the time being immediately administering the Executive Government of the territories where the port or place in question is situate:

"Master."

The word "Master" includes every person having command or charge of a vessel:

"Native Passenger Ship."

The words "Native Passenger Ship" mean a vessel carrying more than thirty passengers, being natives of Asia or Africa, which may depart or proceed on any voyage from a port or place in British India or in the said dominions to any port or place in the Red Sea or Persian Gulf, or which may arrive at any port or place within British India or the said dominions from any port or place in the Red Sea or Persian Gulf, having on board more than thirty such passengers.

Chapter II.

Rules as to Native Passenger Ships.

Native passenger ship to sail only from ports appointed by Government.

5. No native passenger ship shall depart or proceed upon any voyage to which this Act extends from any port or place within British India or the said dominions other than such ports and places as the local Government may from time to time appoint; and, after any native passenger ship has departed or proceeded upon any such voyage from a port or place so to be appointed, no person shall be received on board as a passenger, except at some other duly appointed port or place.

Not to sail without obtaining a certificate.

6. No native passenger ship shall depart or proceed upon any such voyage from any port or place appointed under this Act until the Master shall have obtained a certificate from an officer authorized to grant the same.

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7. If any native passenger ship departs or proceeds upon a voyage from any port or place within British India or the said dominions,

Penalty.

or if any person is received as a passenger on board a native passenger ship in contravention of the provisions of Section 5 or 6,

the owner or Master shall, for every passenger conveyed on a ship unlawfully departing or proceeding on such voyage, or for every passenger unlawfully received on board, be liable to a penalty not exceeding 100 rupees, or to imprisonment not exceeding one month, or to both;

and the ship, if found within two years in any place within British India, may be seized and detained by any Chief Officer of Customs until the penalties incurred under this Act have been adjudicated, and the payment of the fines imposed under this Act, with all costs, has been enforced under the provisions of Section 35.

Appointment of Officers.

8. Within British India, the local Government shall appoint such persons as it may deem proper to exercise or perform the powers and duties conferred and imposed by this Act.

Master to give notice of day of sailing, &c.

9. The Master of any native passenger ship sailing from any port or place appointed under this Act shall give notice to the proper officer that the ship is to carry native passengers and of her destination, and of the proposed day of sailing;

such notice shall be given not less than three days before the proposed day of sailing.

Power to enter and inspect ship.

10. After receiving such notice, the officer aforesaid, or any person authorized by him, shall be at liberty at all times to enter and inspect the ship and the fittings, provisions, and stores therein;

and any person impeding or refusing to allow such inspection shall be liable, on conviction, to a fine not exceeding 500 rupees for each offence, or to imprisonment for a term not exceeding three months, or to both.

Ship may be surveyed.

11. The officer aforesaid may, if he think fit, cause the ship to be surveyed at the expense of the Master by a competent Surveyor, who shall report whether the ship is, in his opinion, seaworthy and fit for her intended voyage.

Officer to be satisfied before giving certificate

12. The officer aforesaid shall not give his certificate unless he shall be satisfied—

That the ship is seaworthy.

(1.) That the ship is seaworthy and properly manned, equipped, fitted, and ventilated, and has not on board any cargo likely, from its quality, quantity, or mode of stowage, to prejudice the health or safety of the passengers.

That the space between decks for passengers is sufficient.

(2.) That the space appropriated to the passengers in the between-decks contains at the least twelve superficial and seventy-two cubical feet of space for every adult passenger on board, that is to say, for every passenger above twelve years of age, and for every two passengers between the ages of one year and twelve years.

That the space on the upper deck is sufficient.

(3.) That a space of four superficial feet per adult is left clear on the upper deck for the use of the passengers.

That there is a due supply of provisions.

(4.) That provisions, fuel, and water have been placed on board, of good quality, properly packed, and sufficient to supply the passengers on board during the declared duration of the intended voyage, according to the scale hereinafter contained.

Number of passengers.

13. No such ship shall carry any greater number of passengers than, together with the Master and crew, shall amount to the proportion of two persons for every three tons of the registered or estimated tonnage of the ship.

List of passengers.

14. The Master of any such ship, before departing or proceeding on any such voyage from any port or place in British India, shall sign two lists, specifying (as accurately as may be) the names of all the passengers, and stating the number of the crew; and shall deliver them to the officer aforesaid, who shall thereupon (after having first mustered the passengers and compared the number and names of such passengers with the lists) countersign and return to the Master one of such lists.

The Master shall note in writing on such last-mentioned list, and on any additional list to be made under this Act, the date and supposed cause of death of any passenger who may die on the voyage, and shall forthwith, on the arrival of the ship at her destination or at any port at which it may be intended to land passengers, and before any passengers are landed, produce the list, with any additions hereto made, to any persons lawfully exercising Consular authority on behalf of Her Majesty at the port of arrival if it be a foreign port, or to

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the Chief Officer of Customs, or the officer (if any) appointed under this Act, at any port or place at which it shall be intended to land the passengers or any of them.

In case of non-compliance with any of the requirements of this section on the part of the Master, or if any false entry be wilfully made by him in any such list, the Master shall be liable to a fine not exceeding 500 rupees for each offence, or to imprisonment for a term not exceeding three months, or to both.

Ship taking additional passengers and touching at intermediate ports.

15. If, after the ship shall have departed or proceeded on any such voyage, any additional passengers are taken on board at a port or place within British India or the said dominions, appointed under this Act for the embarkation of passengers,

or if such ship shall, upon her voyage, touch or arrive at any such port, having previously received on board additional passengers at any place beyond British India or the said dominions, the Master shall obtain a fresh certificate from the officer at such port, and shall make lists of all such additional passengers; and all the provisions hereinbefore contained in that behalf shall be applicable to any certificate granted or list made under this section.

In case the Master fail to obtain any such fresh certificate, or to make any such list of additional passengers, he shall be liable to a fine not exceeding 500 rupees, or to imprisonment for a term not exceeding three months, or to both.

Penalty for fraudulent alteration in ship after certificate obtained.

16. If any Master of a ship, after having obtained a certificate under Section 6 or Section 15 of this Act, shall fraudulently do, or suffer to be done, any act or thing whereby such certificate shall become inapplicable to the altered state of the ship, its passengers, or other matters to which such certificate relates, he shall be liable to a fine not exceeding 2,000 rupees, or to imprisonment not exceeding six months, or to both.

Information to be transmitted to ports of embarkation.

17. The Chief Officer of Customs, or the officer (if any) appointed under this Act, at any port or place within British India at which the ship shall touch or arrive, shall, with advertence to the requirements of this Act, transmit any particulars which he may deem important respecting the ship and the passengers conveyed therein, to the officer at the port from which the ship commenced her voyage, and also to the officer at any other port within British India or the said dominions where the passengers or any of them embarked.

Report of Consul, &c., to be admissible in evidence.

18. In any proceeding for the adjudication of any penalty incurred under this Act, any document purporting to be a report of such particulars as are referred to in the last preceding section, or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising Consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if the same appears to have been officially transmitted to any officer at, or near, the place where the proceeding under this Act is had.

Depositions to be received in evidence when witnesses cannot be produced.

19. Whenever, in the course of any legal proceeding instituted under this Act at any port or place in British India, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition that such witness may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same local Government as the port or place where such proceedings are instituted) or any British Consular Officer elsewhere, shall, if authenticated by the signature of the Justice, Magistrate, or Consular Officer, be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceedings are instituted:

Provided that, if the proceeding is criminal, such deposition shall not be admissible unless it was made in the presence of the person accused, and the fact that it was so made is certified by the Justice, Magistrate, or Consular Officer.

It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

Length of voyage to be fixed by proclamation.

20. Within British India, the local Government may, by any proclamation to be from time to time issued for that purpose and published in the Government *Gazette* (if any), or in one of the public newspapers, declare what shall be deemed, for the purposes of this Act, the duration of the voyage of any native passenger ship from any port or place in British India or the said dominions to any other port or place.

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21. Every native passenger ship, at the time of departure from the port or place at which passengers shall be embarked under this Act, shall have on board good and wholesome provisions for the use and consumption of the passengers, over and above the victualling of the crew, to the amount or in the proportion following, that is to say, a supply of water to the amount of five gallons to every week of the declared duration of the voyage for every passenger on board, such water being carried in tanks or sweet casks, and a supply of rice, flour, oatmeal, or bread-stuffs to the amount of seven pounds weight to every week of such duration voyage for every such passenger;

Quantity of provisions and water to be shipped.

provided that, when any such ship shall be destined to call at a port or place in the course of her voyage for the purpose of filling up her water casks, a supply of water at the rate before mentioned for every week of an average voyage to such port or place of calling, shall be deemed to be a compliance with this Act.

The provision of this section regarding food shall be deemed to have been complied with in any case where it shall appear that, by the special authority of the local Government, any other articles of food were substituted for the articles above enumerated as being equivalent thereto.

22. The requirements of this Act respecting the supply of provisions for passengers shall not, except as to the supply of water, be applicable to any passenger who may have contracted to furnish his own provisions.

Contract by passengers for supply of their own provisions.

23. If any ship, bringing passengers from any port or place east of the Cape of Good Hope and not within British India or the said dominions to any port or place within British India or the said dominions, shall have on board a greater number of passengers or persons than in the proportion prescribed by this Act, the Master of such ship shall, in addition to any other penalty which he may have incurred under the provisions of this Act, be liable, on conviction, for each person in excess of such proportion to a fine not exceeding 50 rupees, or to imprisonment not exceeding one month, or to both.

Penalty on ships bringing excessive number of passengers from certain foreign ports to Indian ports.

24. In the case of every native passenger ship sailing from any port within British India to any port in the Red Sea, the officer whose duty it is to grant a port clearance for any such ship shall not grant such clearance unless, and until, the owner, agent, or Master of such ship and two sureties resident in British India shall, by a joint and several bond, have become bound unto the Secretary of State for India in Council in the penal sum of Rupees 5,000 conditioned to be void if the said ship touches at Aden on her outward and also on her homeward voyage, and does not leave that port without having obtained from the proper authority a clean bill of health.

Bond when ship clears for a port in Red Sea.

25. Every ship carrying more than thirty passengers, being natives of Asia or Africa, and sailing from any port east of the Cape of Good Hope to any port in the Red Sea,

or sailing from any port in the Red Sea to any port east of the Cape of Good Hope,

shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

Ships sailing to, or from, a port in Red Sea to touch at Aden.

Every Master of a ship offending under this section shall, for every such offence, be liable to a fine not exceeding 2,000 rupees, or to imprisonment not exceeding six months, or to both.

26. No bill of health shall be granted under Section 24 or 25 in case the ship has on board a greater number of passengers or persons than in the proportion prescribed by this Act.

Bill of health.

CHAPTER III.

Coasting Steamers.

27. Steam vessels intended to carry passengers on coasting voyages from, or to, any port or place within British India, shall, before proceeding on such voyages, be furnished with certificates granted in manner hereinafter provided.

Certificates to be furnished to coasting steam vessels intended to carry passengers.

28. Every such certificate shall be granted at the discretion of an officer authorized by the local Governmet to grant the same, and shall remain in force for the period therein specified, unless sooner revoked.

Certificates to coasting steam vessels how to be granted, &c.

The officer so authorized shall not grant such certificate, or suffer the same to remain in force, unless he is satisfied, by inspection or survey (to be made at least twice in each year at the expense of the Master or owner, and upon payment of a fee not exceeding 20 rupees), that such steam vessel is seaworthy and properly equipped with boats and otherwise, and that the engines and machinery are in a fit state to enable her to proceed on her voyage.

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The certificate shall state the limits (if any) within which the vessel is to ply, and the number of native passengers which the vessel is permitted to carry: such number to be subject to such conditions and variations according to the time of year, the nature of the voyage, and the cargo carried, as the case requires.

Copy of certificate to be placed in conspicuous part of ship.

29. The owner or Master of any such steam vessel shall put up in a conspicuous part of the ship, so as to be visible to persons on board the same, a copy of the said certificate, and shall cause it to be continued in such position so long as the certificate remains in force; and in default, such owner or Master shall, for each offence, be liable to a fine not exceeding 200 rupees, or to imprisonment for any term not exceeding a month, or to both.

Penalty for excess of number specified in certificate.

30. If such steam vessel has on board thereof any number of passengers which, having regard to the time of the year and other circumstances, is greater than the number allowed by the certificate, the owner or Master shall, for every passenger over and above the number allowed by the certificate, be liable to a fine not exceeding 20 rupees, or to imprisonment not exceeding one week, or to both.

Penalty for proceeding without certificate.

31. If any such steam vessel shall proceed on any such voyage without such certificate as aforesaid, the owner or Master shall be liable to a fine not exceeding 500 rupees, or to imprisonment for any term not exceeding three months, or to both.

Grant or revocation of certificate to be subject to control of Government.

32. In the grant or revocation of any certificate under this Act, the officer granting or revoking the same shall be subject to the control of the local Government or of any intermediate authority which that Government may appoint.

Chapter IV.

Miscellaneous.

Penalty on landing passenger at a place other than that at which he has contracted to land.

33. If any native passenger in any ship shall be landed at any port or place other than the port or place at which he may have contracted to land, unless with his previous consent, or unless such landing is made necessary by perils of the sea or other unavoidable accident, the Master shall, for each offence, be liable to a penalty not exceeding 200 rupees, or to imprisonment for any term not exceeding a month, or to both.

Passenger's right of action preserved.

34. Nothing in this Act contained shall take away or abridge any right of action which may accrue to any native passenger or to any other person, in respect of the breach or non-performance of any contract made with the Master or owner of the ship or his agent.

Adjudication of offences.

35. All offences against this Act shall be punishable in a summary manner by a Magistrate.

Fine leviable by distress on ship.

If the person on whom any fine is imposed under this Act is the Master or owner of a ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture, and apparel.

Jurisdiction.

36. For the purpose of the adjudication of penalties under this Act, every offence hereunder shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

By whom proceedings for penalties to be instituted.

37. The penalties to which Masters and owners of ships are liable by this Act shall be enforced only by information laid at the instance of the officers appointed to grant certificates under this Act; or, at any port or place where there is no such officer, by the Chief Officer of Customs.

Application of fines.

38. Any Magistrate imposing any fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such fine is imposed, or in, or towards, payment of the expenses of the proceedings.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

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THE

MADRAS REVENUE REGISTER.

No. 10.] MADRAS:—SATURDAY, OCTOBER 15, 1870. [Vol. IV.

THE COLLECTOR OF A DISTRICT.
IV.

We propose now to consider the daily life of a Collector as *we* conceive it ought, and as, to a greater or less extent, we believe it must be spent.

Considering the importance and the variety of the Government property committed to his charge, it is not too much to say that he might, and ought to, occupy himself fully every morning in the careful and minute inspection of roads, irrigation and all other works of public utility, or in the examination of police stations, and post, telegraph, and registration offices, &c., with all of which he is intimately concerned, and for the proper and efficient management of which he is directly or indirectly responsible. A ten-mile ride and a careful inspection of one office or public work will account for the early morning very fairly. Then, we will assume that the post comes in about breakfast time with letters from the Board, &c., and a voluminous "*mulki* tappal;" and, allowing him an hour to read, mark (literally) and inwardly digest the English correspondence on every variety of subject as shown in previous numbers, there is next the vernacular tappal, which is to be "opened and read in his presence," and, as far as possible, answered at once by a draft across the face of the arzi or petition. Supposing there to be twenty of the latter and perhaps twice as many arzies (from subordinate officials), a very moderate allowance we believe, an hour is the least that can fairly be allowed him for this part of his daily routine. Then petitions and personal complainants must receive some time, and this may be as good a time as any when parties have had their morning meal and before the regular Court work has begun. "An officer's accessibility to the "people is of the utmost importance both "as regards persons having grievances "to redress (qu: ? to be redressed ?) or "representations to make, *and* as a check on "his own establishment," (Dalyell, 319-1); so that one hour a day devoted to this duty will not be much more than is required on the average, especially since there are generally a few complainants in criminal cases whose complaints must be taken down in writing *then and there* and disposed of somehow. This brings the day to what Mr. Disraeli calls "the sacred hour of two," consecrated in this country to the worship of the great god Tiffin; and we fancy it will scarcely be considered improper to allow even a Collector half an hour to play the host to his long-suffering wife and friends.

Tiffin done, he is set upon at once and closely invested by his moonshies (variously called goomastahs, rayasums, clerks, or even

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jawabnavisses) with yesterday's orders to be read over to him and signed, and the undisposed of portion of to-day's vernacular tappal to be finished if possible. Now, the mere reading of twenty or thirty intricate orders in Tamil, so as to be clearly intelligible to a European, *not* perhaps quite so familiar with the language as is contemplated by the standing orders, is a matter of some time; and, indeed, we entertain considerable doubt as to the fact of their being generally so read at all, and still more as to its being of any use if they are. It is only quite recently that we heard of a Collector gravely sitting with his own drafts before him listening to his mellifluous moonshee reading, as he thought, from the fair copy of the order to be signed, but who was, in fact, looking over his innocent master's shoulder and inventing the order from the draft, whilst the Collector, at the conclusion of the solemn farce, was made to sign something entirely different! Practically there is no safeguard against this very ingenious little plant, unless a Collector reads all his orders himself! so that, on the whole, it is quite as well to make the head of the office really as well as nominally responsible that the order agrees with the draft, and merely have the docket read over. Tahsildars and other subordinates should, of course, be instructed to bring to notice any case where an inconsistency may be observed between the docket and the order, and then exemplary punishment should be inflicted on the writer.

But we are digressing, and must return to our Collector. After disposing of his orders, (or Takeeds, as they are called,) he should devote a little time to looking into the accounts and see how business is going on in his own office. He should then send for his "confidential manager"—the Head Sheristadar—and go thoroughly into the last abstruse *chapamani* case or petition referred by the Board or Government; and we think, if our readers will take the trouble to calculate the time we have accounted for, we shall be found to have brought him up to 5 or even 6 P. M., without a magisterial inquiry at all, and without any very long or intricate letter to the Board. Our readers will wonder, we dare say, when the Magistrate does his work; and so should we if we did not know pretty well that, as a general rule, he avoids the bulk of it altogether. Even the Government, (as we pointed out in beginning this disquisition,) began to wonder about three years ago, and has apparently confined itself to wondering ever since; for there has been no result whatever from the sermon they preached so long ago which formed the text of our discourse, and nothing whatever has been done to remedy the evils they professed to have discovered. On the contrary, it is only the other day, (as Government Orders go,) that they turned round and solemnly rebuked nearly every District Magistrate, (excepting, of course, amongst a few others, the gentleman who, as Acting Chief Secretary, signed the order, and was consequently singled out for warm and generous approval,) for not doing what they had some years before said it was impossible for them to do by reason of the variety of their onerous and more important duties. For his work as a Magistrate trying cases is a small part of what he is expected to do, though, we believe, very few indeed ever think of attempting to do this: in addition to his regular daily work, as indicated above, he may at any time have a single case that will occupy him the greater part of every day for a week, and, as head of an office consisting of all the revenue servants in the district and literally to be numbered by thousands, he is, of course, expected to exercise the most constant supervision over all of them, and satisfy himself especially as to the way in which the upper ranks of his subordinates do their work. To do this he

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must spend a good deal of time in listening to his sub-magistrates trying cases, but must carefully avoid letting his own cases fall into arrears in consequence.

We have mentioned already "the frequent unexpected examinations of treasuries" and the taluk accounts, and the Collector's very considerable demi-official correspondence—half an hour a day would hardly be too much for that item alone; we have still to allude to the monthly, quarterly, annual, special reports on almost every conceivable subject, which must be got through on Sundays and holidays. More of a Collector's time is spent in reporting what he has done, or is going to do, or wants permission or sanction for doing, than in all the actual doing of it. Then, again, he is editor of a weekly paper, and has to look sharp after the voluminous records and see that they are kept in proper order and duly distinguished with "R" and "D" seals; and, with reference to the records, he should be constantly looking into them and reading up all that relate to the earlier history of his district with a view to selecting portions to be printed.

Quite recently, in addition to what used to be considered a fair amount of work for a very average Anglo-Saxon in the tropics, he has been made President of all the Municipal Commissions in his district; and it may easily be imagined what an amount of troublesome delicate work is involved in that position, and what a number of those precious mornings must now be devoted to Municipal meetings and accounts. Then again, the administration of Local Funds has assumed quite a different aspect of late years in consequence of the imposition of a road-cess which has swelled them in many districts to a very considerable sum. But it is perhaps, as defendant in almost all the civil suits in which Government is involved, that his position is most unpleasant and even critical. It is quite impossible for any man, however cool and able, not to be constantly harassed by the feeling that any accidental omission of a technical point may cause the suit to be decided *ex parte* against him, and he *may* find himself cast in damages to any amount and thrown over by Government, even though he may have acted to the best of his judgment. Practically, of course, *bona fides* is always presumed in favour of a Collector; but he is still liable, as the standing order says, "unless it is clear that "he has shown *proper* care and attention "in the defence of the suit;" and it may easily be imagined what an anxious part of his duty the constantly recurring civil suit always is. It need hardly be added that the "spread of civilization" and law tends constantly to the multiplication of suits against Government, as people become less and less satisfied with the rough and ready justice that suited a more ignorant state of society well enough. Of course, we are very far indeed from advocating any restriction of the natural right of every one to seek a (legal) remedy for any injury he may have incurred, but we think it only right at the same time that Collectors and public servants generally should have both better means of avoiding mistakes, and greater and more efficient assistance in defending themselves when they happen to fall into error. It is not at all desirable that the executive should be paralyzed by the fear of law: occasions may arise any day in India where an officer of very slight experience may be called upon to incur very grave responsibility, and the example of Governor Eyre is only too likely then to crush the energies of any but the boldest and most independent spirits. One remedy which we would propose would be the appointment of an officer who is called (we believe) in Calcutta a "Legal Remembrancer," to whom references could always be made on points

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of difficulty when an ordinary up-country official, thrown very much on his own resources and without access to authorities, is often at a loss.

We have now, we trust, pointed out the very impossible character of a Collector's work as at present constituted, and have endeavoured to show *how* it is so impossible. We will close our remarks for the present by quoting, in illustration of them, the returns showing the Inspection of Registration Offices by Revenue Officers—we have none such unfortunately for Police stations and schools—for the *first* year, (when it might be supposed a little extra vigour would be displayed,) to prove that Collectors generally fail to attempt to do a great part of the duty which is so frequently impressed on their attention. We find, then, from the first report that, out of a total of 626 inspections by Revenue Officers, only four were made by the nineteen Collectors!

CORRESPONDENCE.

MORTGAGEE *v.* VENDEE.

To the Editor of the Madras Revenue Register.

DEAR SIR,

In February last I addressed you a letter (which appeared in the *Jurist* for June 1870, page 212) requesting you to solve the difficult question in regard to the rights of a mortgagee and vendee. In that letter I pointed out that a subsequent purchaser takes the property subject to a prior mortgage, and quoted several authorities in support of that matter. Now the question is whether this principle is applicable also to Government revenue sales, *i. e.*, whether the purchaser of land sold by the Collector of Revenue for the arrears of the revenue of that land takes it subject to the prior mortgage under a bond executed by the puttahdar of the said land.

On a careful perusal of the judgment passed by the Madras High Court on the 1st April 1870 in R. A. No. 107 of 1869, (G. Anandu *v.* V. Bapurazu, IV *Madras Revenue Register*, 141, for May 1870); Sections 35, 38, and 42 of Madras Local Act II of 1864; and the Indian Mortgage Law (by Hon. A. J. MacPherson), I am of opinion that the land is sold for arrears of revenue free of all incumbrances; as the Government charge takes precedence of other claims, the revenue sale of the land destroys the mortgagee's lien. If the mortgagee is in possession of the land, its revenue is, and shall be, payable by him, and that sum shall constitute also a mortgage debt. If the mortgagee allows the estate to fall into arrears, he cannot buy and acquire irredeemable interest in the land sold for arrears of revenue: when the land is sold for revenue, the mortgagee may sue for his money as an ordinary creditor, and can ask the Court to attach the amount of revenue deposit intended to be paid to the puttahdar as surplus proceeds of land sold for arrears of revenue thereof.

Under these circumstances I think the purchaser of the land sold for arrears of the revenue thereof takes it free of all incumbrances, notwithstanding that the prior mortgage is either established by a decree of a Civil Court or the bond is registered under the Registration Act.

Your obedient servant,
AN ADVOCATE.

PURGHY, 28*th August* 1870.

To the Editor of the Madras Revenue Register.

DEAR SIR,

I beg to submit a few propositions for solution.

Some seven or eight connected suits of a *most intricate* nature have been brought to a close in a Munsiff's Court after a long and wearisome examination of several witnesses in addition to several documents that have been filed on both sides. In the course of the inquiry a question has been raised by defendant's vakeel that the suits have not been properly valued under Act XXVI of 1867; the suits were filed in the beginning of 1869, when that Act was in force. The plaintiff sues to establish his right to, and recover possession of, one and odd share of lands in a village under the ryotwar settlement and the revenues payable thereon to the Government have not been finally settled. He has paid the stamp duties under note (*a*) Article 11, Schedule B, Act XXVI of 1867, that is, eight times the revenue due thereon to Government. The defendant's objection is that, as the market value of the lands sued for is much greater than eight times the revenues accruing thereon, and exceeds 1,000 Rupees by Rupees 200, the suits are not cognizable by a Munsiff's Court. The annual revenue payable to Government upon the lands in dispute in each of the said seven or eight suits is Rupees 60, and the market value of the lands in each case amounts to Rupees 1,200. The stamp duty in each suit was levied on Rupees 480 (8 × 60). The plaintiff argues that, under Clause 3, Section 11, Regulation VI of 1816, which is *still* in full force, and by which alone the Munsiffs' Courts in this Presidency have been guided

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till this day, the jurisdiction in these suits must be determined upon the value of the annual produce of the lands in dispute in each suit, which amounts to only Rupees 220 and a few annas, a sum less than Rupees 1,000, and not upon the market value of the lands. Note (*a*) in Schedule B of the said Act runs thus—"In suits for immoveable property, "whether paying or not paying revenue to "Government, the amount of stamp duty pay-"able shall be computed according to the "market value of the property in suit. In "suits for immoveable property paying revenue "to Government, where the settlement is tem-"porary, eight times the revenue so payable, and "where the revenue is permanent ten times the "revenue so payable, and in suits for immove-"able property not paying revenue to Govern-"ment twenty times the annual net profits of "such property shall be taken to be the market "value thereof, unless, and until, the contrary "shall be proved." And Section 11, Clause 3, of the abovementioned Regulation is worded as follows, "For land subject to the payment of "rent in money or in kind, either to Govern-"ment or to any person representing Govern-"ment and receiving its dues, the annual produce "of which land shall not exceed 1,000 Arcot "Rupees." The plaintiff, after having advanced the above argument, appears to be willing to pay stamp duties on the market value of the lands in each suit, in the event of the question of jurisdiction raised by defendants being settled in his favour.

In another separate suit the plaintiff sues to recover possession of fifty palmyrah trees paying to Government annually 40 Rupees. The suit has been instituted after the Court Fees' Act (Act VII of 1870) came into operation. The stamp duty appears to have been paid upon the yearly revenue, that is, on five times 40 rupees. The defendant starts an objection to the valuation of the suit on the ground that the trees in dispute in the suit should not be considered as lands under Clause 5, Section 7 of the Court Fees' Act, and contends that the duty must be levied upon the market value of the trees under note (*e*) in that section.

Suits of the above nature are in daily occurrence in this district, and I wish, therefore, you will kindly clear my doubts on these points. The questions to be solved are as follow :—

(1.) Upon what principle can the jurisdiction in the above stated seven connected suits be determined, whether on the principle laid down in Section 11, Regulation VI of 1816, or whether upon the market value of the lands in dispute under Note (*a*) Article 11, in Schedule B, Act XXVI of 1867.

(2.) If the above question be determined in favour of plaintiff, that is, the jurisdiction must be determined upon the annual value of annual produce of the lands in dispute agreeably to the provisions contained in that Regulation, then how are the stamp duties in those suits to be levied, whether upon eight times the revenue payable to Government thereon, or upon the market value thereof.

(3.) What is the force and legal meaning of the phrase "unless, and until, the contrary shall be proved" in the Note (*a*) in Schedule B, Act XXVI of 1867.

(4.) Whether insufficient stamp duties payable in suits filed when Act XXVI of 1867 was in force can be levied under the new Court Fees' Act.

(5.) On what principle is the stamp duty in the suit, wherein the plaintiff sues to recover fifty palmyrah trees paying revenue to Government, to be levied under the Court Fees' Act?

I am, Sir,
Yours faithfully,
INQUIRER.

TINNEVELLY,
22*nd September* 1870.

We do not think that there should be any doubts on these points. The valuation of suits must be governed by the Stamp Act in force at the time of the filing of the suits. Perhaps, however, some one of our readers who is skilled in the practice of the Courts on the knotty question of valuation of suits, will be disposed to oblige our correspondent with the benefit of his experience.—ED. *R. R.*

HIGH COURT—MADRAS.

(Appellate Side.)

SCOTLAND, C. J., AND INNES, J.

Suit to enforce puttahs—Default on adjourned day of hearing—Ex-parte decision—Appeal.

A leaseholder sued his ryots to exchange puttahs and muchilkas with him. Certain of them appeared on first day of hearing, and submitted; the others failed to put in their answer, or appear, on the adjourned day of hearing. The Collector pronounced an ex-parte decision in favour of plaintiff. The Civil Judge reversed this decree on ground of misjoinder, and because certain of the defendants had put in an appearance on the first day of hearing—

HELD *by High Court that upon the above facts the Collector was empowered, under Section* 57 *of Act VIII of* 1865, *to pass an ex-parte decree, from which no appeal lay. Civil Judge's judgment reversed, and Collector's decision confirmed.*

Civ. Mis. Pet. 136 *of* 1869.

A. Soobramania Pillay *v.* M. Perumal Chetty and sixty-nine others.

THIS was an application, under Section 35 of Act XXIII of 1861, praying the High Court to revise the proceedings of the Civil Court of Tinnevelly reversing the decision of the Collector, passed *ex-parte* in a suit under the Rent

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Recovery Act, (Madras Act VIII of 1865). The particulars of this case and the preliminary judgment of the High Court will be found at page 251 of Vol. IV. of the High Court Reports and at page 90 of Vol. III. of the *Madras Revenue Register*. The facts are briefly these. Soobramania Pillay, as lessee of the village of Nunjancolum, sued his ryots (seventy in number) in the Court of the Collector under the Rent Recovery Act to compel them to accept puttahs. Six of them appeared on the day fixed for hearing (21st June 1867), and agreed to accept the puttahs tendered; but the others applied for copy of the plaint to enable them to put in their defence. The Collector furnished them with the required copy, and fixed the 24th June, within which to put in their answer. Neither on that day nor for four days after, to which the Collector extended the time of his own motion, did the defendants put in their answer or appear in person or by pleader, whereon the Collector proceeded to hear the suit *ex-parte*, and gave judgment in favour of the plaintiff on the 4th July 1867. Defendants appealed to the Civil Court. Mr. Swinton, then Acting Civil Judge, dismissed the appeal as barred by Section 58 of the Rent Recovery Act, which provides that there shall be no appeal against a decision passed *ex-parte* by the Collector. On the return of Mr. Child, the Civil Judge, the defendants petitioned him for review of judgment. Mr. Child admitted a review on the ground of misjoinder, and doubted whether the Collector's judgment was *ex-parte*, inasmuch as certain of the defendants appeared on the first day of hearing. The plaintiff appealed to the High Court against this admission of review. Having heard the argument, which will be found set out at page 90 of the *Revenue Register* above quoted, their lordships held that, under Section 378 of the Procedure Code, the order granting the review was final; but, in order to save the parties the expense of an appeal, they expressed the opinion that, as Act VIII of 1865 lays down all the procedure for suits before a Collector, the decision of the Collector, under Sections 57 and 66 of that Act, was rightly an *ex-parte* decision. As the Civil Judge had meanwhile suspended execution of the Collector's decree and the pauper ryots in possession were cutting and carrying away produce to the serious loss of the lessee, he submitted copy of the judgment of the High Court to the Civil Judge, and prayed him to set aside his order admitting a review. The Civil Judge, however, dismissed the plaintiff's petition, and referred him for redress to the High Court. He then passed a decision setting aside Mr. Swinton's judgment, and, in reversing the Collector's decree in favour of the plaintiff, he called upon him to assess the plaintiff in such damages as he might find to be fairly due to the ryots. The closing words of Mr. Child's judgment were as follow, "The whole case is illegal from beginning to end. A landlord, suing a man for refusal to receive a puttah, must sue him separately, and must produce the puttah, and the ryots must be separately summoned, and care taken that the summons is served on him and that proper time is given him to appear, and proper place named. The Collector should be extremely cautious in calling cases *ex-parte*. The worse the Court, the more cases are *ex-parte* from intrigue or other causes. The decision of the Collector is reversed with costs. The ryots will be placed in possession again with such damages as the Collector may fairly find due. Of course, there is nothing to prevent the landlord bringing a fresh suit against each man. Costs to bear six per cent."

The plaintiff appealed to the High Court. Scharlieb for plaintiff, Sunjiva Row for the defendants. For the plaintiff it was submitted that the object of the Rent Recovery Act, namely, speedy relief, had been entirely defeated by the Civil Judge's proceedings, for the suit was brought in the early part of 1867, and here, in 1870, the plaintiff was still praying to be relieved against his defaulting ryots; that the ryots were still in possession, and had never been out of possession; that the puttah had actually been produced to the Collector and approved by him, as shown in his judgment; that Section 69 of Act VIII of 1865 specially provided that no judgment of a Collector shall be set aside "*for want of form, or for irregularity in procedure, but upon the merits only;*" and that Section 57 provided that a case shall be tried *ex-parte* if either party was absent even on "*any subsequent day to which the hearing of the case might be adjourned.*" Sunjiva Row contended that the Collector should be directed to re-place the suit on his file, and allow each ryot the opportunity of putting in his defence.

At a preliminary hearing their lordships were pleased to issue orders suspending execution of the Civil Judge's decree on the plaintiff paying into the Collector's Court the amount of costs and damages assessed against him, and at the final hearing they delivered the following

Judgment:—29th July 1870.

This is a petition, under Section 35 of Act XXIII of 1861, to set aside the decree of the Civil Court of Tinnevelly, passed on review of a former decree, on the ground that the Court had no jurisdiction to entertain the appeal in which the decree was passed. The appeal was from a decree of the Collector passed *ex-parte* against the appellants, ordering them and other tenants to receive the puttahs tendered by the respondent, and the sole questions raised as to the jurisdiction of the Court is whether the Collector's decree was legally passed *ex-parte*;

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for, if so, under Section 58 of Madras Act VIII of 1865, no appeal lay.

The facts material to the decision of that question which we consider to be established by the record are that these appellants were present on the day fixed for the trial of the suit before the Collector; but that they did not appear on the day to which the hearing was adjourned to admit of their putting in a written statement. For this default the suit was on the 28th June 1867 heard and decided *ex-parte*. We have no doubt upon these facts that Section 57 of the Act empowered the Collector to pass an *ex-parte* decree, and it is unnecessary to do more than say that we think the opinion expressed upon the point in the case between the same parties, reported in IV. Madras High Court Reports 251, is right. The decree of the Civil Court must, therefore, be reversed.

It was urged in argument for the counter-petitioners that we had the power, under Section 35 of Act XXIII of 1861, to make such order in the case as we thought to be right, and that an order should be made for the re-hearing of the case by the Collector. But we do not consider that there is any sufficient ground to warrant such an order, and we cannot refrain from noticing with disapproval the very strong language of the judgment of the Civil Judge and the unmeasured censure which it was intended to convey, and adding that we see nothing in the conduct of the case by the Collector which can be considered to have been harsh or unfair to the appellants. Allowing one suit against several tenants under distinct holdings was certainly an error in procedure, but no prejudice on the merits appears to have been thereby occasioned.

The order of this Court reversing the decree must require the petitioner to re-tender puttahs to the counter-petitioners in accordance with the Collector's decree, and the counter-petitioners to receive the same and deliver muchilkas in exchange within two weeks from the tender of the puttahs.

SCOTLAND, C. J., AND HOLLOWAY, J.

Right to enjoyment of water—Alteration of dam—Perpetual injunction.

Where A sued to prevent the alteration of a mud dam into one of brick and chunam, the Munsiff dismissed the suit on the ground that the alteration would not entail loss on A; but the Civil Judge, holding that the defendant had not proved her right to alter the existing condition of the channel, reversed the Munsiff's decree, and gave judgment in favour of A—

HELD *that the right to obstruct the flow of water being admitted, the defendant had a right to make it as effective and inexpensive as possible; that the alteration of the machinery for the exercise of an admitted right is not an injury; and that something more than the possibility of a legal right being infringed must be proved, to justify the interference of a Court by a perpetual injunction.*

S. A. 11 *of* 1870.

Sri Rajah Row Butchi Sitiah *v.* Sri Rajah Row Bhaviah.

THE plaintiff, proprietress of the Kirlampudi Estate, sued to prevent the defendant, proprietress of the adjoining estate of Viravaram, from erecting a brick-facing across a bund. Plaintiff alleged that an earthen bund had been placed across the Kodandaramudu Channel, which ran along the southern part of two villages attached to her estate; that the defendant had, contrary to the existing usage, commenced to face this bund with brick, and to raise it higher; and that, by this, the escape of the surplus water would be prevented, and damage to the extent of Rupees 800 per annum occasioned to her crops. Defendant admitted that the earthen bund had been long placed in the channel; but pleaded that it was necessary to strengthen it with brickwork, as it would cost her Rupees 500 to repair it, and loss would be occasioned to her crops. The District Munsiff of Peddapore issued a commission, under Section 180 of the Civil Procedure Code, to Mr. Hicken, an Overseer in the D. P. W., to make an inquiry and to report whether any loss would accrue to plaintiff's estate by the brick-facing being added to the present earthen bund. On that officer reporting that no loss was likely to be caused to plaintiff's estate, the Munsiff dismissed her suit with costs. Plaintiff appealed to the Civil Court. The Civil Judge, Mr. Morris, was of opinion that, as defendant had distinctly admitted that the earthen bund had been long in existence, and as she had produced no documentary evidence to show that she had any right to alter the present condition of the channel, (which flowed between plaintiff's estate and her own, and to the water of which, as riparian owners, they had equal rights, it was not necessary to remand the case for evidence as to the existing usage). The Civil Judge was also of opinion, that Mr. Hicken's report was insufficient to show the rights of the parties, and to justify the dismissal of the suit. It was just for matters to remain as they were, and future disputes on this point would be less likely to occur. Mr. Morris, therefore, reversed the Munsiff's decision, and found for the plaintiff, each party, however, bearing her own costs. From this decree the defendant appealed to the High Court. Kuppuramasawmi Sastry for appellant; Sloan for respondent.

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The High Court delivered the following

Judgment:—*4th July* 1870.

This is a case in which the Civil Judge has granted a perpetual injunction against the defendant facing a mud dam with brick. The right to the mud dam is not disputed and the right to obstruct the water is consequently admitted. The Civil Judge has simply granted it upon the ground that the mud dam has long existed, and no evidence has been adduced of a right to alter it. The fallacy is in treating the right as one to a mud dam: the right is to obstruct the flow of the water; and, that right being conceded, the defendant has a right to make it as effective and inexpensive as possible for that purpose. The alteration of the character of the right might be an injury to the plaintiff, but an alteration of the machinery of its exercise is no such infraction. The ground of the application was that the brick-faced dam would, in case of a flood, throw back the water upon land of the plaintiffs, while the mud dam would give way. It is admitted that for several years no case of such flood has occurred; and the remote possibility of damage from the occurrence of such a flood is certainly no ground for interfering with the defendant by injunction. To justify this procedure, there must be something more than the possibility of a legal right being infringed. For such infraction after infraction, damages are the natural remedy, and a case might be shown for the additional remedy of an injunction to prevent a recurrence of the injury. As to whether damage caused by a flood after the erection of the brick-faced dam would be an injury, we are expressing no opinion. It is sufficient to say that in the present case all the facts alleged by the plaintiff would not, if proved, make a fit case for an injunction. We, therefore, reverse the decree of the Civil Judge, and dismiss the original suit with costs.

HIGH COURT—CALCUTTA.

Jackson, L. S., and Glover, J. J.

Mahes Chandra Chattapadhya (plaintiff) *v.* Guruprasad Roy (defendant.)*

Moveable property—Act X of* 1859, *Sections* 86, 99—*Act VI of* 1862, *(B. C.,) Section* 17—*Act VIII of* 1859, *Sections* 236, 265—*Execution of decree for rent—Collector, sale by.

A obtained a decree against B for arrears of rent. C was an under-tenant of B under an ijara lease. In executing A's decree against B, the Collector sold the "rights and profits of the debts due for rent" from C to B, for the years 1273-4-5. *A became the purchaser, in a suit brought by D, as assignee of A, of rents alleged to be due for the years* 1273-4-5—

Held *that, for the purposes of Act X of* 1859, *rent is moveable property; and that the Collector, therefore, was competent to effect the sale to A.*

Chandrakant Bhattacharjee v. *Jadupati Chatterjee* distinguished.

This was a suit brought before the Deputy Collector of Moorshedabad on the 16th June 1869. The suit was brought to recover from the defendant arrears of rent amounting to 693 Rupees, together with interest amounting to 107 Rupees,—in all 800 Rupees.

The circumstances of the case were as follow: The plaintiff alleged that one Godhen Mandal *alias* Lutafat Hossein had obtained an *ex parte* decree against one Mr. Robinson for rent due under an ijara lease, and, in execution of that decree, a sale took place, at which Godhen Mandal became the purchaser of "the right and profits of the debts due for rent to Mr. Robinson, for the years 1273, 1274, 1275 (1866, 1867, 1868)," from his under-tenant, the defendant in the present suit. That, subsequently to his purchase of Mr. Robinson's interests in the rents claimed, he, Godhen Mandal, had assigned them by a deed of sale to the plaintiff. The present suit was brought under Godhen Mandal's deed of assignment.

The defendant stated, first, that plaintiff had no cause of action against him, inasmuch as no relationship of landlord and tenant existed between them; secondly, that he had already paid to his landlord, Mr. Robinson, the sums due for the years 1273, 1274, 1275, before Godhen Mandal had instituted his suit against him.

On the evidence, the Deputy Collector considered that the defendant had failed to prove his allegation of having paid the rents to Mr. Robinson. As to the first plea set up by the defendant, he was of opinion, on the production of the certificate of sale in execution obtained by Godhen Mandal and his deed of assignment to the plaintiff, that the plaintiff took the position of Mr. Robinson, as landlord of the defendant; and, upon reference to *Shama Soonderee Dossee* v. *Bindabun Chunder Mozoomdar*,† and *Binode Beharee Mookerjee* v. *Beer Narain Roy*,‡ that the plaintiff could institute this suit under Act X of 1859. He gave a decree for the plaintiff accordingly.

The defendant appealed to the Officiating Judge of Moorshedabad, who was of opinion that "in a general way any assignee, whether by purchase or otherwise, certainly succeeds to the rights assigned to him in a legal manner; and, in the ordinary transactions of life, an assignment of debts due to A, by A to B, would be sufficient to authorize B to collect such debts. But, in the present instance, the transaction must be tested by the provisions of Act X of 1859.

"Now, Act X of 1859 nowhere provides for the sale in execution of decree of a right to collect rents, for a certain period of years, such as is said to have been sold in the present instance. Plaintiff could only obtain a right to collect such rents by the sale under Section 105 or 109, Act X of 1859. But it is not contended, and, in fact, cannot be contended, that, in the present case,

* Special Appeal, No. 111, of 1870, from a decree of the Judge of Moorshedabad, dated 18th December 1869, reversing the decree of the Deputy Collector of that district, dated 16th June 1869.

* 1 B. L. R., A. C., 177.

† Mar., 199. | ‡ 5 W. R., Act X Rul., 52.

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there was any sale of the tenure, for which rent was in arrears under Section 105, nor was there any sale of immoveable property under Section 109. Respondent's pleader has argued that the sale must be regarded as a sale of 'moveable property.' But it is impossible to apply the rules laid down in Sections 87, 98, and 99 of Act X of 1859, to a sale of debts due to a judgment-debtor; and the absence of any specific provisions as to the mode in which an attachment under sale of debts should be effected (such as are contained in Sections 236 and 265 of Act VIII of 1859) leads me to the conclusion that no sale of personal debts due to a judgment-debtor, in execution of a decree under Act X of 1859, can be upheld as a valid transfer of the rights to recover such debts.

"With reference to defendant's second plea, it appears that he failed to prove payment of the money as alleged by him. It is unnecessary to enter into this question at present. But I may remark that, in all cases of this nature, some notice to the tenant should be proved. (*The Collector of Rajshahye* v. *Hursoondery Debea,** and *Thakoor Doss Gossain* v. *Petumber Roy.*)"†

He decreed the appeal and dismissed the suit, and the plaintiff appealed to the High Court.

Baboo *Mahini Mohan Roy*, for appellant, contended that the unrealized arrears of rent were "moveable property" and "debtor's effects," within the meaning of Section 87 of Act X of 1859, and were, therefore, capable of being attached under an Act X decree.

Baboo *Mahendra Lal Seal*, for respondents, cited *Chandrakant Bhattacharjee* v. *Jadupati Chatterjee*,‡ and urged that, in execution of a decree in an Act X suit, the Court could only issue an execution against property which was capable of manual seizure: such was not a right to collect rents.

The judgment of the Court was delivered by

Jackson, J.—The question raised in this special appeal is whether, in execution of a decree for arrears of rent under Act X of 1859, the Collector has power to sell the right of the judgment-debtor to recover rent, being at that time due from the under-tenant. In the case before us, the superior landlord had recovered a decree for rent against Mr. Robinson, his lessee, and, in execution of his decree against him, he procured to be sold Mr. Robinson's right to recover rent against his under-tenant, Guruprasad Roy. It has been held by both the Courts below that rent was due, at the time when the sale took place, from Guruprasad Roy to Mr. Robinson; therefore, the only question is, whether the sale by the Collector, in execution of the Act X decree, gave the purchaser a right to sue for the rent.

The Judge has held that it did not; but it seems to me that the Judge was mistaken in that view, and that the sale could be lawfully made, and is valid.

Section 86, Act X of 1859, has been re-placed by Section 17, Act VI of 1862, B. C., and that section provides that "the process of execution "may be issued against either the person or pro- "perty of the judgment-debtor, but process of "execution shall not be issued simultaneously "against both the person and property." And then Section 87, Act X, provides "that any "moveable property required to be seized under "an execution shall, if practicable, be described "in a list to be furnished by the judgment-creditor;" and then the section goes on to say, "the pro- "perty to be seized shall be pointed out to the "officer entrusted with the execution of the pro- "cess by the creditor or his agent." The question, therefore, is whether rent due being a debt is included in the words "moveable property."

I find that in Act VIII of 1859, which was passed a very short time before Act X, debts due to the judgment-debtor, from the party answerable for the amount of the decree, are enumerated among the kinds of property which may be attached and sold, and are not therein reckoned as immoveable property, but are clearly classed as moveable. It is very unlikely that the legislature, in passing about the same time two such Acts as Act VIII and Act X of 1859, should have used the same expression "moveable property," including under it debts and such matters in the one Act and excluding them in the other. Act VIII of 1859 contains much more elaborate directions for attachment and sale than Act X contains. Act X seems, as it were, to compress into one or two sections all that is elaborately provided for in the various sections relating to that subject in Act VIII.

It is admitted that a landlord may assign his right to recover rent to a third party, and that such party, under the assignment, may proceed to sue for, and recover, this rent by suit under Act X of 1859. If that be so, we have not much difficulty in arriving at the conclusion that the Collector's Court might sell, under the denomination of moveable property, that which the landlord himself might assign by private sale.

We have been much pressed by a decision in *Chandrakant Bhattacharjee* v. *Jadupati Chatterjee,** in which it is contended that the Court laid it down that a Collector's Court is incompetent to sell, in execution of a decree under Act X of 1859, the rights of the judgment-debtor in any suit. It appears to me that the decision of the Court in that case went by no means so far as the respondent's vakeel contends before us to-day. (Here the learned Judge recited the facts, and read the judgment of the Court upon the point, in the case of *Chandrakant Bhattacharjee* v. *Jadupati Chatterjee*).*

Baboo Mahendra Lal Seal, for the respondents, has read to us a passage from Mr. Warrens Blackstone, in which rents are described as incorporeal property. It seems to me that this definition does not press us to decide the point. It is sufficient to say that rents seem to me to come, for the purposes of Act VIII as well as of Act X of 1859, within the terms "property" and "moveable property;" I think, therefore, that the Collector was competent to sell these rents, and that the purchaser, by that sale, acquired a legal title to recover the rents, and that he was competent to maintain the suit; and was, therefore, entitled, the rents being due, to a decree. I think, therefore, that the decision of the lower Appellate Court must be reversed with costs.—*28th April 1870.—Bengal Law Reports, Vol. V., Part XXV.*

* W. R., 1864, Act X Rul., 6.
† S. D. A., 1859, 820.
‡ 1 B. L. R., A. C., 177.

* 1 B. L. R., A. C., 177.

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SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

FULLERTON, SCOTT, AND STRATTON, J. J.

Professional-tax—Zemindary—Illegal collection.

Where a Zemindar, under istimrar sunnud, collected professional-tax from certain cloth-painters within his zemindary—

HELD *that the tax, being one which, in conformity with the established principles of the permanent settlement, was to be excluded from the assessment, could not be legally collected by the Zemindar.*

No. 10 *of* 1816.

CERTAIN cloth-painters, in the village of Comangalum, sued a Zemindar, in the Zillah Court of Chingleput, to recover money illegally collected by him from them on account of a professional-tax.

The Zillah Court adjudged the defendant to be entitled to make the collection of the tax in question, and dismissed the suit with costs.

In appeal, the Provincial Court for the Centre Division reversed the decree of the Zillah Court, and adjudged the original plaintiffs to be entitled to recover from the original defendant the amount proved to have been collected from them.

But the Court of Sudr Udalut admitted a special appeal from the decision of the Provincial Court, and found, in the Dowle account to which the appellant referred as the foundation of his claim to make the collection, that it was termed "*Roccadayam* payable by the Pallapulladay, *i. e.*, painters of cloth, and Chetties of Comangalum," that, in all the written demands for its payment served upon the respondents by the superintendent of the zemindary, it was invariably denominated a professional-tax, or a tax for painting cloths. The evidence of the witnesses was to the same effect, namely, that the tax was formerly paid by the respondents, because they were not cultivators but persons exercising a trade or profession. The Court had no doubt, therefore, that the tax which formed the subject of the suit was one of those exclusively of which it was declared in Section 4, Regulation XXV of 1802, that the permanent assessment should be made.

The exclusion of the several items of revenue enumerated in Sections 4 and 5, Regulation XXV of 1802, was recited in the instruments executed respectively by the Government to the Zemindar (the sunnud-i-milkeut-i-istimrar), and by the latter to the former (the kabuliat), the Court, therefore, could allow no weight to the argument of the appellant, that, as the settlement of his zemindary was made previously to the promulgation of Regulation XXV of 1802, the provisions of that Regulation were not to be applied to the present case.

The tax in question, then, being one which, in conformity with the established and universal principles of the permanent settlement, was to be excluded from the assessment, the Court could not recognize any right in the Zemindar to levy it; and, affirming the judgment of the Provincial Court, they directed that the appellant should pay all costs.

SCOTT, GREENWAY, AND OGILVIE, J. J.

Arrears of revenue—Seizure of grain deposited in granary—Trespass—Damages.

Where the Collector entered the granary of a revenue defaulter and took away certain grain, which he sold in satisfaction of arrears, and pleaded that he was justified in doing so, as the grain had been received from the Kudians in payment of revenue and had been deposited in the plaintiff's granary with his consent—

HELD *that this was a trespass and titling plaintiff to damages for loss actually sustained; that it was not a case analogous to distraint under Section 17, Regulation XXVIII of 1802; and that the proper course for the Collector was to have sued the plaintiff for the recovery of the grain deposited with him. Plaintiff, however, non-suited with costs, as he could not prove damages.*

No. 1 *of* 1817.

The Collector of Malabar and others *v.* Attoor Illata Soobhan Putter.

ATTOOR ILLATA SOOBHAN PUTTER sued the Collector of Malabar and ten others, in the Provincial Court for the Western Division, for the recovery of the value of certain grain alleged to have been taken away from his granary, and of certain articles secured in a box alleged to have been taken away at the same time.

The Provincial Court adjudged that the Collector should pay to the plaintiff the sum of Rupees 357-1-25, the value of the grain admitted to have been taken away from the plaintiff's granary, and interest thereon, amounting to Rupees 105-1-15, making a total of Rupees 462-2-40. The abstraction of the box containing money and valuables not being proved, that part of the plaintiff's claim was disallowed, and the parties were adjudged respectively to pay the prescribed proportion of costs. The other defendants included in the original suit were exonerated from all costs on the ground that they had acted under the instructions of the Collector.

The Collector of Malabar applied to the Court of Sudr Udalut for the admission of a special appeal from this decision, and the Court were of opinion that the cause was of sufficient

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importance to merit a further investigation, and admitted the special appeal solicited.

On the original hearing of this suit, it was alleged, on the part of the plaintiff, that his granary contained 2,251 parras of grain, his property, some having been received by him in payment from others, some bought with his own money, and some the produce of his own lands; that, after the Collector had committed the act which was the ground of the present action, there were found in the granary only 223 parras and 5 dungalees, and that consequently 2,027 parras and 5 dungalees had been taken away.

On the part of the Collector it was admitted that a quantity of grain, amounting to 1,875 parras and 8½ dungalees, was taken away from the plaintiff's granary and sold under the Collector's orders; but it was averred that the quantity so taken away and sold was grain which had been received from the Kudians in payment, or rather as security for the payment, of the Government revenue, and, with the plaintiff's consent, deposited in his granary until the time for selling it should arrive.

The Provincial Court, in their decree, having briefly recapitulated the allegations of the parties, stated that they "considered it unnecessary to go more minutely into the pleas respectively urged by the parties and the evidence adduced on both sides as to the point of whether the 1,875 parras of paddy, which it is allowed, on the part of the defendants, were taken from the granary belonging to the Attoor Illana and occupied by the plaintiff, was the property of Government, and merely stood in the said granary, with his permission, or whether the same was the property of the plaintiff;—being clearly of opinion, founded on the circumstances of the case, as they appeared in evidence and were admitted by the Collector, that he was not justified, under any authority vested in him by the Regulations, to issue an order, to cause the granary occupied by the plaintiff to be opened, and the quantity of grain, as admitted, to be taken from it;" and they added that the Collector, being fully apprized of the claim set up by the plaintiff to the said granary, "there was no (other) legal course left for him to pursue than instituting an action against the plaintiff for the recovery of the said deposit." These were the grounds upon which the Provincial Court adjudged the Collector to pay to the plaintiff the value of the grain admitted to have been taken away together with interest thereon.

The Collector submitted to the Provincial Court an application for a review of judgment, on the ground that, as it was alleged, on the part of the defence, that the grain in question was deposited in the Attoor Illana granary in security for the public revenue and actually sold in liquidation thereof, the issue of the suit depended upon the establishment of that fact, or rather that it was incumbent upon the plaintiff to prove that the grain in question was truly and justly his property and not liable for the arrears of revenue on account of which it was sold; and that, as the Provincial Court had confessedly omitted to determine this point, they had not sufficient grounds for their judgment. In support of his application for a review of judgment, the Collector cited part of Section 17, Regulation XXVIII of 1802.

The Provincial Court rejected the Collector's application for a review on the ground that the case bore no analogy to that of a revenue defaulter or of a surety for the payment of revenue; that the act of the Collector, in ordering the granary of the plaintiff to be opened, under the circumstances stated, was a manifest trespass; and that, admitting the case to be, as stated by the defendant, the plaintiff could, in their opinion, be viewed only in the light of a depositary of the Government property, which, if he refused to restore or disputed, the deposit could only be recovered by civil action. The Provincial Court added that the decree passed by them did not decide upon the question of right to the grain, which was left for future adjudication should the Collector think proper to institute a suit thereon.

The Sudr Court entirely concurred in opinion with the Provincial Court that the act of breaking open the plaintiff's granary was a trespass. On the Collector's own showing the grain in question had been entrusted by him, or under his orders, to the custody of the plaintiff; and, on the plaintiff's refusal to deliver it up, his course was to sue the plaintiff for its recovery, when he would have been entitled to damages to the full extent of the loss which he had sustained by the plaintiff's refusal to restore it. It was a deposit which could lawfully be recovered only by legal process. If a plea of right to goods was admitted to justify a violent entry into a man's premises, it was manifest that a door would be opened to the unjust invasion of property, the extent of which it was not easy to foresee. The Court further agreed in opinion with the Provincial Court that the case under consideration bore no analogy to a case of distraint, and consequently Section 17, Regulation XXVIII of 1802, cited by the defendant, had no relevancy to it.

But, while the Court agreed with the Provincial Court in opinion that the act in question was a trespass, they did not consider that the plaintiff was entitled to the amount of damages awarded by the decree, namely, the value of the grain admitted to have been taken away from his granary. The plaintiff was clearly entitled to compensation only for the

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damage he had sustained; and, before he could justly recover the value of the grain taken away, it was necessary for him to prove that the grain was his property, or that he was responsible elsewhere for its value. It appeared to the Court that the plaintiff in this case had altogether failed to show that the grain in question was his property; and that, on the other hand, the evidence produced, on the part of the defence, clearly establishes the fact that 1,875 and odd parras of grain, the quantity admitted to have been taken away, were deposited by the revenue officers of the district in the plaintiff's granary, with his consent, such grain having been received from the ryots in security for the revenue due by them.

The plaintiff, therefore, having failed to establish that he had been endamaged, in the amount awarded to him, by the decree of the Provincial Court, and having, in fact, failed to show that he suffered any loss whatever by the act of the Collector, judgment must be pronounced against him, and he must be made liable for all costs. The Court, therefore, setting aside the decree of the Provincial Court, adjudged the respondent to reimburse to the Collector the sum awarded to him by that decree, namely, Rupees 462-2-40, and to pay all costs in the Provincial Court and in this Court.

OFFICIAL PAPERS.

Forest Training School for Madras Presidency.

Proceedings of the Madras Government, Revenue Department, 13th June 1870.

Read the following Proceedings of the Board of Revenue, dated 27th January 1870, No. 583:—

Read the following Proceedings of the Madras Government, dated 12th November 1869, No. 2,954, Revenue Department:—

Abstract.—*Forest Training School for Madras Presidency.*—Proposal of the Conservator of Forests to establish one referred to the Board of Revenue for observations.

With these Proceedings the Government forward, for the remarks of the Board, a letter from the Officiating Conservator of Forests proposing to establish a school for training a certain number of candidates for employment in the Forest Department.

2. Major Beddome points out the great disadvantages which attend every effort to establish a system of forest conservancy, owing to the want of Superintendents possessing any knowledge of the first principles of forestry.

3. It was at one time proposed to open a training school at the Nellumboor Teak Plantations, but Major Beddome does not now advocate that plan. He shows that at Nellumboor (the planting being confined to teak) no general knowledge of arboriculture could be obtained there, and points out that, as the country is feverish and the people inhospitable, considerable expense would have to be incurred in the erection of dwelling houses, &c., for the pupils. Major Beddome, in preference, recommends that a school for a limited number of pupils should be opened under the charge of the Conservator at Ootacamund, where he shows that pupils would have the advantage of studying planting in tropical, subtropical, and alpine regions, and would be in a position to acquire more varied information in forestry than at any other place.

4. The question of establishing a training school at the expense of the jungle conservancy funds was raised in 1867, and referred to the Collectors of districts for their opinions.

Board's Proceedings, dated 22nd November 1867, No. 7,607.

5. The Collectors were divided in their opinions, some considering that no measure of the kind was required for their districts, while others foresaw considerable advantages in the proposed scheme. They also differed as to the class of men to be employed, some Collectors proposing to train intelligent men of the Overseer class, whilst others would have been content with subordinates on 7 Rupees a month.

6. The general question of jungle conservancy having been at the same time brought forward and referred to the districts for report, all action was stayed as regards the training school, pending the receipt of the reports from the different districts on the measures of protection which the several Collectors proposed to adopt.

7. From these reports (herewith submitted) it appears that conservancy has been carried into practice, and reserves for firewood formed, to a greater or less extent, in all districts.

8. The measures adopted in various districts differ, of course, according to the varying circumstances of the country to be treated, but a beginning has been everywhere made. It is not necessary in this place to review in detail the proceedings in each district; but the Board are satisfied that the time has now come for gradually introducing more systematic treatment of the jungles under conservation, and, with this view, they strongly advocate the establishment of a training school at Ootacamund as suggested by Major Beddome.

9. The Board have conferred with Major Beddome on the subject, and agree with him in thinking that, for the present, a limited number of pupils of the Overseer class should be entertained. Major Beddome considers that a course of training of from four to six months would be sufficient to fit intelligent young men for employment under Collectors. A class consisting of five individuals, of whom three should be natives, would be sufficient at first, and the Board consider that an allowance of 40 Rupees a month each for the former and 20 for the latter would suffice. As these men become duly qualified they might be sent to the districts and be re-placed by others. Their salaries while training would be fairly chargeable to Local Funds, and the cost should be distributed rateably over all the districts.

	RS.
Two, at 40	80
Three, at 20... ...	60
Total...	140

10. The Board consider that this will be preferable to charging the salary of individual pupils to particular districts. Each district will in its turn be supplied with Overseers from this class, and may, therefore, be fairly called on to contribute to its general cost.

11. The Board are also of opinion that it is highly desirable that the superior officers of the department, before entering on their duties in the districts, should undergo a course of training at Ootacamund, the expense being, of course, borne by the Imperial Forest Revenue; with this view, if possible, one or two supernumerary officers should be appointed.

12. The proposal of Major Beddome to establish a museum for the department also commends itself as sure to be of the greatest aid to students of arboriculture, and the Board recommend that funds be allotted, whenever available, for the purpose.

13. Pending the passing of a new Forest Law, it would be premature to discuss the future organization of the department; but the Board consider that the first step towards improvement in forest management will be to provide the means of training an efficient body of men to carry the law into effect whenever it may be passed.

Order thereon, 13th June 1870, No. 865.

Ordered to lie over until the proposals for the re-organization of the Forest Department are disposed of.

(True Extract.)
(Signed) R. A. DALYELL,
Acting Secy. to Government.

THE CÆSALPINIA BONDUCELLA.

Read the following papers :—

From the Officiating Conservator of Forests, to the Acting Under-Secretary to Government, Revenue Department, dated Camp at Ootacamund, 19th April 1870, No. 2,067.

In acknowledging receipt of the Proceedings of Government, No. 527, of the 13th instant, I have the honour to inform you that the *Gajga* or *Cœsalpinia bonduc (Linn)*, of which pods were forwarded to Mr. Broughton, is very common in many parts of our Presidency, particularly so about the backwaters on the Western Coast, where the plant is known by the native name of *Kalichi*. The nuts are used by the natives as a febrifuge and tonic. They have been analyzed, and are said to contain oil, starch, sugar, and resin. At Mr. Broughton's request I am procuring him a few pounds of the seed.

From the Inspector-General of the Indian Medical Department, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated 23rd April 1870, No. 100.

I have the honour, with reference to paragraph 2 of Proceedings of Government, Revenue Department, and Order thereon, No. 527, of 13th April 1870, to inform you that the plant *(Cœsalpinia bonducella)* therein referred to is widely diffused in Southern India and very common in Mysore and the Deccan.

2. The seeds are frequently used by natives for the relief of malarious fever. European practitioners have also tried both seeds and roots as a febrifuge with satisfactory results.

From the Government Quinologist, Ootacamund, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated 27th May 1870.

I have received G. O., No. 527, of 13th April 1870, and the enclosed papers on the subject of Lata seed.

2. The shrub that produces the *Bonduc* nuts, (as they are called in this Presidency,) is well known, and the nuts are to be had in every bazaar. From inquiries I made in 1868 I was not led to form a high opinion of their medical efficiency as a febrifuge.

3. I have examined the nuts chemically; they contain no special crystalline principle. Their bitterness is due to the presence of an oil which will be found to possess, in a concentrated degree, any therapeutic virtues possessed by the nuts. I find this oil to be readily extracted by carbonic disulphide.

4. I have the honour to forward a sample of this oil for medical trial. On the datum given in Mr. Houghton's letter that a single nut is a dose, a dose of this oil should consist of 3 grains. The quantity sent will furnish 300 doses.

5. The oil on saponification yields a peculiar patty acid, related to olric acid, on which doubtless depends its special properties. This acid, however, is unfitted for medical use, since it rapidly oxidizes when exposed to the air; hence the oil alone is suitable for use as a medicine. The separation of the acid in a pure state would be a work of very great labour, and would require large quantities of oil. I shall, therefore, defer attempting it until the efficiency of the medicine has been proved.

6. Further quantities of oil can be supplied when required. I have the honour to request that I may be informed of the result of its trial.

Order thereon, 13th June 1870, No. 867.

The sample of oil received from Mr. Broughton will be forwarded to the Government of India in compliance with their letter, dated 9th February 1870, No. 769.

2. The following letter will be despatched to the Government of India :—

(Here enter No. 868, dated 13th June 1870.)

(True Extract.)
(Signed) R. A. DALYELL,
Acting Secy. to Government.

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REVENUE DEPARTMENT,
FORT SAINT GEORGE,
13th June 1870.
No. 868.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
Home Department.

SIR,—Adverting to your letter, dated 9th February 1870, No. 769, I am directed to submit to His Excellency the Governor-General in Council the marginally-noted enclosures relating to the plant *Cœsalpinia bonducella*, and also to forward a sample of oil extracted from its nuts by the Government Quinologist.

From the Offg. Conservator of Forests, dated 19th April 1870, No. 2,067.
From the Inspector-General of the Indian Medical Dept., dated 23rd April 1870, No. 100.
From Mr. Broughton, Govt. Quinologist, dated 27th May 1870.

I have the honour to be,
Sir,
Your most obedient servant,
(Signed) R. A. DALYELL,
Acting Secy. to Government.

PUTTAH LANDS ON THE NEILGHERRIES.

Proceedings of the Madras Government, Revenue Department, 15th June 1870.

Read the following Proceedings of the Board of Revenue, dated 7th May 1870, No. 3,047:—

Read the following letter from the Commissioner of the Neilgherries, to the Acting Secretary to the Board of Revenue, dated Coonoor, 31st March 1870, No. 51.

I have been furnished with the survey areas of the present holdings of the Badagas within the settlement limits of Coonoor. The result is that, within this limited area, the Badagas are found in possession of 675·39 acres in excess of the 562·93 acres they pay for under puttah.

2. I append a statement showing the actual excess held by each Puttahdar. In all instances they wish the excess to be charged in their puttahs, and I have ordered their puttahs to be made out accordingly.

3. In some instances, such as Puttahs Nos. 205, 206, 569, 239, the excess is three or four times greater than the puttah area. Still, from inquiries made on the spot, I do not think these* are recent encroachments. As far as I can learn, the Puttahdars have been in long possession, and I have, therefore, thought it best, even in these instances, to recognize the right of the Puttahdars to the excess. The sooner we have a general survey of all the puttah lands in this district, the better.

*With one exception, No. 206, about which I may have to address the Board again.

ENCLOSURE No. 1.—List.

The Commissioner reports that the survey of the settlement of Coonoor has shown that the Badagas who have settled there cultivate 675 acres besides the 562 which they are supposed to occupy and actually pay for. He recommends a general survey of all puttah lands on the Hills.

2. The Board resolve to lay the report before Government, and to recommend that the Survey Department, who are now at work on the Hills, be instructed to survey puttah lands at the same time as the reserves, swamps, &c., to which their attention has been already directed. The additional work will probably not be seriously felt.

3. The Board approve of the Commissioner's proceedings in allowing the Puttahdars to remain in possession of the whole of their holdings.

Order thereon, 15th June 1870, No. 878.

With reference to paragraph 2 of the foregoing Proceedings the Government resolve to request the Superintendent of Revenue Survey to arrange for the survey of puttah lands on the Neilgherry Hills if the duty can be undertaken by the party now at work there.

(True Extract.)
(Signed) R. S. ELLIS,
Chief Secretary.

VILLAGE CESS IN ZEMINDARIES.

Proceedings of the Madras Government, Revenue Department, 16th June 1870.

Read the following Proceedings of the Board of Revenue, dated 14th March 1870, No. 1,719.

Read the following letter from the Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 29th January 1870, No. 437.

The Head Assistant Collector of this district reports to me that the Mohatads, Vettyans, and other village servants in the Nuzid Zemindary do not usually receive their regular fees, and that the introduction of Act IV. of 1864 is urgently required to correct the present state of matters. I do not find any provision in the Act for its introduction into zemindary villages; but from Sections 2 and 9 of the Act it appears that the sanction of the local Government should be obtained for its introduction in *any part of a district.* In the case of lands held on Visabady sists the cess can be levied on the full assessment and water-tax, if any; and, when *Asara* or the sharing system prevails, it can be levied on the actual sums paid to the Zemindar by the ryots.

2. If the Board consider that the Act can be introduced into the zemindary estates, I shall, in communication with the Zemindars in this district, submit definite proposals on the subject.

In this letter the Acting Collector of Kistna refers to the necessity of extending the operation of the Village Service Act (IV. of 1864) to zemindary tracts, in order to correct certain irregularities with regard to the fees of officers in those parts, and adds that, if the Board consider that the Act can be introduced into the zemindary estates, he will place himself in communication with the Zemindars on the subject, and submit definite proposals.

2. The Board do not think that the Act can be applied to zemindaries. Looking at the wording of the Water-cess and Road-cess Acts, it is

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to be inferred that, had the legislature intended it to extend to zemindaries, specific provision would have been inserted.

3. Zemindary ryots cannot be deemed to be landholders paying assessment to Government (Section 3), and Section 4 seems inapplicable.

4. Under these circumstances the Board submit the Collector's letter to Government with their opinion that it may become necessary to extend Act IV. of 1864 (Madras) to zemindaries, but they are not prepared to move in the matter at present.

Order thereon, 16th June 1870, No. 886.

The Right Honourable the Governor in Council concurs with the Board of Revenue in considering that the Village-cess Act cannot be held applicable to zemindary estates.

(True Extract.)

(Signed) R. S. ELLIS,
Chief Secretary.

SEASON REPORT.

REMARKS ON THE SEASON.

NORTHERN SECTION.—The rainfall was inadequate for the requirements of the season in Ganjam, Vizagapatam, and Nellore. In Godavery and in parts of the Kistna rain was abundant, and was followed by heavy freshes in the rivers.

Ganjam.—The transplantation of *paddy* and *raggy* was retarded in Ganjam by the insufficient rainfall, which also slightly affected the standing *gingelly, guntalu,* and *sugarcane* crops.

Vizagapatam.—In Vizagapatam the cultivation of dry grains was undertaken in localities where it had hitherto been neglected. *Sugarcane* and *cotton* were thriving, and species of *paddy,* known as *satiga* and *chittida,* were harvested in Palcondah.

Godavery.—The heavy freshes in the river Godavery swept away the crops on the islands. Tanks, however, received good supplies, and anicut channels were full. Transplantation under the latter was in active progress, and the condition of the early dry crops and garden products was remarkably good.

Kistna.—The unusually heavy freshes in the Kistna River inundated a few villages in the Repalli and Bandur Taluks, and caused some of the tanks to burst. The same danger appeared imminent with a few other tanks. Early crops were in course of cultivation. Lands were prepared for the reception of *lamp-oil seeds,* and seed-beds of *paddy* were formed in favoured localities. The success of the *sujja* and *jiddy jonna* crops, already sown, was not the same everywhere.

Nellore.—*Peshanum* and *sannavari* and a large number of dry grains were cultivated in Nellore. *Indigo* was being cut, and the standing *sujja* and *karukesari* crops were thriving. Ploughing operations had not yet ceased.

Prices ruled high in Kistna and in parts of Ganjam. In the other districts they declined, with a few exceptions.

Cholera broke out in all these districts. Prompt medical assistance was afforded in Kistna, where the genuineness of the epidemic was doubted by the Civil Surgeon. Small-pox and fever were abating, but had not entirely disappeared.

Cattle suffered in a limited degree from disease.

CEDED DISTRICTS.—The rainfall was general in Cuddapah and Kurnool, and unequally distributed in Bellary. In parts of the latter district it was heavy, and did not cease pouring for fourteen consecutive days.

Cuddapah.—Tanks received only a scanty supply in Cuddapah. The cultivation of dry grains, to a small extent, was progressing, and the standing crops, excepting a few in Royachote, and *sugarcane* in Kadivi, which had suffered from blight, were doing well. *Chennangy paddy* and *indigo* were harvested; the yield was three-fourths of a full crop.

Bellary.—In Bellary ryots were busily engaged in cultivation. No lack of pasture was experienced.

Kurnool.—All over the Kurnool District, *paddy, jonna korra, raggy,* and *arika* were sown. The early crops were suffering from blight in the Cumbum Taluk to a small extent.

Prices of grains rose in Cuddapah and Kurnool. In Bellary, markets were well supplied and prices were falling.

Cholera appeared in one or two villages of Cuddapah, but was not fatal. Public health was, on the whole, good.

The *moosara* disease in Bellary, *saruku* in Cuddapah, and *murrain* in Kurnool, slightly affected the health of cattle. In the two former districts Dr. Thacker's medicines were applied with success.

EAST CENTRE.—There were rains throughout this section.

Chingleput.—In Chingleput, *cumboo, raggy, gingelly-oil seed, indigo,* and different kinds of *paddy* were sown. The intermittent fall of rain, by causing an excess of moisture, proved prejudicial to the dry crops, and also impeded, in some measure, the cultivation of dry lands.

North Arcot.—In North Arcot, *horse-gram, sujja, indigo, arigaloo, raggy,* and *paddy* were sown. Excess of moisture in Vellore and Arcot, and the want of water in Polur, slightly injured the standing crops.

South Arcot.—In South Arcot, the usual dry grains, *kar-paddy,* and *sugarcane,* were sown. *Indigo* and *kar* crops were harvested in a few taluks. Difficulty was still experienced in parts of Trinomalay and Cullacoorchy Taluks from want of water and pasture.

Prices did not differ materially from those of the previous month in North and South Arcot. In Chingleput they rose slightly.

Cholera carried off 45 persons in North Arcot. Its prevalence in South Arcot was limited, and was not attended with any serious loss of life.

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Chingleput enjoyed immunity from the epidemic, and there was no other disease of sufficient prevalence to affect public health.

Cattle suffered from disease in North Arcot.

CAUVERY.—The rainfall was scanty in Trichinopoly, and tolerably good in Tanjore.

Tanjore.—Ample freshes came down the Cauvery and Coleroon in Tanjore. The tanks in the dry taluks, except one, received moderate supplies. *Kadupukar* and dry grains were under cultivation.

Trichinopoly.—In Trichinopoly the growth of pasture was obstructed by the scanty rainfall, and it was apprehended that the standing dry crops on unirrigated lands would suffer unless nourished by a few more plentiful showers. *Kar* and *sumba paddy* and *sugarcane* were cultivated under irrigating channels, which had received considerable supplies from the freshes in the Cauvery and Coleroon.

Prices were almost stationary.

Cholera prevailed to a slight extent in Tanjore, but public health was, on the whole, good.

Cattle also preserved good health.

SOUTHERN SECTION.—Rains in this section were confined to a few partial and scanty showers.

Madura.—The state of things in Madura was far from favourable. Tanks had run quite dry, crops had withered from drought, and serious inconvenience was felt from want of water and pasture for cattle.

Tinnevelly.—In Tinnevelly, *kar-paddy, cumboo, raggy, dholl,* and *cholum* were cultivated. The young crops were healthy in Ambasamudramand Tenkasi Taluks, but in others had suffered from inadequacy in the water-supply.

Prices rose.

Cholera was abating. Public health was good.

WEST CENTRE.—There was a limited fall of rain in Coimbatore. In the other districts the fall was tolerably good.

Coimbatore.—In parts of Coimbatore, where the rains had been sufficiently heavy, dry grains were cultivated, *raggy* was being transplanted, and lands were under preparation for the cultivation of *paddy*. The standing crops looked healthy. Wells were not full, and tanks, excepting those fed by the south-west monsoon, were no better.

Neilgherries.—On the Neilgherries, *coralie, samay, raggy, ganjay, wheat,* and *keeray* were in good condition. *Coffee* was blossoming.

Salem.—*Kar-paddy* and dry grains were cultivated in Salem, the former under well irrigation. The standing crops, including *cotton* and *indigo*, of which there was a large cultivation in some of the taluqs, were flourishing. *Kar-paddy, cumboo, raggy,* and *sugarcane* were cut during the month.

Prices were rising in Salem in the prospect of a demand for export to other districts. That of second sort *rice* and *horse-gram* on the Neilgherries was falling.

Fever and cholera, the latter of which was confined to Salem, affected public health in some measure.

Cattle also suffered slightly from disease.

WEST.—Rains in this section were seasonable and steady.

South Canara.—The cultivation of first-crop *rice* was over in South Canara, and the seedling looked promising.

Prices were stationary.

Cholera in Malabar, and fever and small-pox in South Canara, were to a small extent prevalent.

Cattle were healthy.

***Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency, for the Month of July* 1870, *Fusly* 1280.**

DISTRICTS.		Prices of Grain and Sea Salt.												Rainfall.				
		2nd sort Rice.		2nd sort Paddy.		Cholum.		Raggy.		Horse Gram.		Sea Salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Fusly		Fusly		Fusly		Fusly		Fusly		Fusly						
		1279	1280	1279	1280	1279	1280	1279	1280	1279	1280	1279	1280					
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam	286	262	116	106	248	181	168	131	215	196	281	317	5·00	6·00	4·10	4·90	5·00
	Vizagapatam	394	297	172	131	282	172	230	158	236	179	282	313	5·0	0·90	3·20	3·60	3·17
	Godavery	289	232	134	104	166	127	168	118	206	184	242	273	5·58	4·11	4·89	4·96	4·88
	Kistna	362	333	162	148	185	203	167	170	255	210	291	348	6·00	3·37	8·27	3·65	5·32
	Nellore	366	324	172	152	154	196	135	163	228	235	262	324	2·58	2·21	3·54	1·92	2·56
Ceded Districts.	Cuddapah	404	421	189	231	180	211	168	183	208	241	311	346	6·80	1·55	4·22	2·77	3·84
	Bellary	370	429	148	181	128	258	110	154	160	217	378	429	3·51	0·71	1·52	2·84	2·14
	Kurnool	420	415	190	186	150	202	154	189	220	244	331	367	4·15	4·31	6·12	3·38	4·49
East Centre.	Chingleput	473	374	217	160	279	293	251	215	304	258	267	292	4·19	3·85	6·02	4·38	4·61
	North Arcot	433	341	194	147	229	187	216	170	234	175	243	296	3·40	3·20	2·70	3·70	3·25
	South Arcot	424	298	189	134	235	143	231	153	226	179	276	327	3·22	1·77	4·18	2·67	2·96
Cauvery.	Tanjore	385	270	182	126	203	164	196	138	210	189	251	298	1·85	2·37	1·25	0·90	1·59
	Trichinopoly	413	317	191	146	163	152	192	150	217	172	282	321	0·31	0·15	3·00	0·52	0·99
Southern Section.	Madura	427	372	204	171	175	171	231	163	189	176	284	329	0·60	0·20	3·15	1·65	1·40
	Tinnevelly	444	430	211	197	225	222	216	215	211	219	289	344	0·02	...	...	0·58	0·15
West Centre.	Coimbatore	466	409	230	203	289	258	238	208	251	194	338	385	3·01	1·56	1·18	1·31	1·77
	Neilgherries	582	533	...	...	291	320	246	267	291	246	457	457	...	...	3·14	5·06	4·10
	Salem	404	335	184	155	209	165	189	149	195	152	298	344	3·04	2·35	2·00	1·12	2·13
West	South Canara	384	399	173	177	...	...	247	258	304	289	254	285	42·60	38·20	37·70	39·80	39·57
	Malabar	465	406	217	195	...	...	214	184	316	250	302	354	32·95	18·97	27·09	26·98	26·49

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Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of July 1870, *Fusly* 1280.

	DISTRICTS.	COTTON.				Market rate of cleaned Cotton per Candy of 500 lbs.	INDIGO.				Market rate of Cake Indigo per Maund of 25 lbs.
		Fusly 1279.		Fusly 1280.			Fusly 1279.		Fusly 1280.		
		Extent.	Assessment.	Extent.	Assessment.		Extent.	Assessment.	Extent.	Assessment.	
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	5,315	10,715	5,966	11,413	165	......	......	......	......	70
2	Vizagapatam ...	7,313	10,505	3,329	6,570	158	196	821	106	626	46
3	Godavery ...	235	708	1	1	144	407	1,269	838	1,109	58
4	Kistna ...	4,571	4,548	277	314	141	5,465	10,415	6,552	10,718	52
5	Nellore ...	637	654	250	310	152	10,402	22,992	11,539	27,764	46
6	Cuddapah ...	1,685	889	901	662	110 to 180	15,965	63,260	15,275	1,01,737	40 to 70
7	Bellary ...	1,024	499	3,471	1,691	156	2,796	6,188	4,095	7,439	66
8	Kurnool ...	2,763	4,281	10,327	8,719	138	33,638	67,241	38,106	72,[illegible]95	54
9	Chingleput ...	......	......	......	......	...	1,502	5,195	2,906	7,794	...
10	North Arcot ...	258	644	1,246	2,750	150	3,690	9,105	8,360	16,492	52
11	South Arcot ...	279	529	1,286	2,484	121	18,510	36,446	60,294	95,379	46
12	Tanjore ...	59	72	1,706	2,194	160	127	182	294	2,137	25
13	Trichinopoly ...	191	112	292	178	136	17	46	65	138	14
14	Madura ...	1,989	3,085	3,057	4,991	100	2	6	20	38	40
15	Tinnevelly ...	282	398	170	200	149	19	8	19	...	31
16	Coimbatore ...	8,279	6,393	18,264	17,654	126	......	......	......	...	30
17	Salem ...	1,009	1,456	4,676	6,598	190	305	1,525	609	4,245	35
	Total...	35,888	45,488	55,219	66,724	......	93,041	2,24,699	1,40,208	3 48,646	......

REVENUE BOARD OFFICE,
MADRAS, 22*nd August* 1870.

(Signed) J. GROSE,
Acting Secretary.

CIRCULAR ORDER OF THE BOARD OF REVENUE.

No. XII. OF 1870.

STANDING No. 404-13.

U. C. SERVANTS ACTING IN POSTS LESS THAN 100 RUPEES TO HAVE AVAILABLE ALLOWANCES.

Proceedings of the Board of Revenue, dated 8*th September* 1870, *No.* 5,642.

The following ruling of the Government of India* modifies the provisions of the Board's Standing Order No. 404-11:—"When an Uncovenanted Servant acts in an "office on a salary of less "than 100 rupees per mensem, the authority by "whom he is appointed may, if necessary, allow "him as much of the salary of that office as is available."

* Comunicated in Government Order of 30th June 1870, No. 149, Revenue Department.

(A true Extract.)

(Signed) J. GROSE,
Acting Secretary.

(True Copy.)

(Signed) J. T. MAYNE,
First Assistant.

ACTS OF THE GOVERNMENT OF INDIA.

THE following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 1st April 1870, and is hereby promulgated for general information:—

ACT No. XIII OF 1870.

An Act to apply the provisions of Act No. XVIII of 1854 *to Railways belonging to, or worked by, Government.*

Application of Railway Act to Railways belonging to Government but worked by Companies.

1. Act No. XVIII of 1854 (*relating to Railways in India*) shall apply to all Railways now or hereafter belonging to Government, but worked by a Railway Company, in the same manner as if such Railways belonged to the Company and had been opened by the Company in manner mentioned in the preamble to the said Act.

Application of Railway Act to Railways worked by Government.

2. Subject to the modifications hereinafter mentioned, the said Act shall apply to all Railways now or hereafter worked by Government in the same manner as if such Railways had been opened by a Railway Company in manner aforesaid.

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Modifications of Act when applied to Railways worked by Government.

3. In applying the said Act to any Railway now or hereafter worked by Government,

the expressions "servant of the Company," "such servant," "such servant of the Company," "servant of the said Company," "Company's servants," "servants of the Company," "their servants," and "any of their servants," shall mean a servant or servants employed on such Railway:

the expressions "officer or servant of such Railway Company," "officer or servant of such Company," "officer or servant of the Company," "servant or officer of the Company," and "such officer or servant," shall mean an officer or servant employed on such Railway:

the expressions "the premises of any such Railway Company," "the premises of the Company," "premises belonging to the Company," "lands belonging to such Railway Company," and "lands, stations, or other premises belonging to the Company," shall mean the premises, lands, or stations (as the case may be) occupied by, or for, such Railway:

the expression "delivered to such Railway Company" shall mean "delivered to an officer on behalf of Government," and the expression "engagements on behalf of the said Railway Company" shall mean "engagements on behalf of Government:

Sections 9 and 10 shall be read as if, for the expression "No such Railway Company shall," the expression "the Government shall not" were substituted":

the expressions "any such Railway Company," "such Railway Company," "any such Company," and "the Company" shall mean, in Sections 3, 6, 8, 11, 12, 15, 22, 27, and 30, the Government;

but in Sections 17, 19, 20, 21, 23, 41, and 42, the expressions "Railway Company," "such Railway Company," "the Company," and "they" (when referring to a Company) shall mean the officer for the time being entrusted with the control of such Railway:

in Section 20 the expression "their Railway" shall mean such Railway:

and Section 29 shall be read as follows:—

"XXIX. In the construction of this Act, every officer and servant employed on such Railway shall be deemed to be legally bound to do everything necessary for, or conducive to, the safety of the public, which he shall be required to do by any Regulation made by the officer for the time being entrusted with the control of such Railway and allowed by the Governor-General of India in Council, and of which Regulation such officer or servant shall have notice;

and every such officer and servant shall be deemed to be legally prohibited from doing every act which shall be likely to cause danger, and which, by any such Regulation, he shall be prohibited from doing;

and every person employed by, or on behalf of, the Government, to do any act upon the Railway, shall be deemed to be a servant employed on such Railway."

(Signed) WHITLEY STOKES,
Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,
Chief Secretary.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 5th April 1870, and is hereby promulgated for general information:—

ACT No. XIV OF 1870.

An Act for repealing certain enactments which have ceased to be in force, or have become unnecessary.

Preamble.

Whereas it is expedient that certain enactments (mentioned in the schedule to this Act) which have ceased to be in force otherwise than by express and specific repeal, or have, by lapse of time and change of circumstances, become unnecessary, or which merely repeal prior enactments, should be expressly and specifically repealed; It is hereby enacted as follows:—

Enactments in schedule repealed.

1. The enactments mentioned in the schedule to this Act are hereby repealed to the extent specified in the 3rd column of the same schedule:

Provided that the repeal by this Act of any enactment shall not affect any Act or Regulation in which such enactment has been applied, incorporated, or referred to:

And this Act shall not affect the validity or invalidity of anything already done or suffered, or any indemnity already granted, or any right or title already acquired, or accrued, or any remedy or proceeding in respect thereof, or the proof of any past act or thing:

Nor shall this Act affect any principle or rule of law, or established jurisdiction, form, or course of pleading, practice, or procedure, or existing usage, custom, privilege, restriction, exemption, office, or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognized, or derived by, in, or from, any enactment hereby repealed:

Nor shall this Act provide or restore any jurisdiction, office, usage, custom, privilege, restriction, exemption, usage, or practice not now existing, or in force.

Short Title.

2. This Act may be called "The Repealing Act, 1870."

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SCHEDULE.

PART I.—STATUTES.

Year and Chapter.	Title.	Extent of repeal.
13 Geo. III., Cap. lxiii.	An Act for establishing certain regulations for the better management of the affairs of the East India Company as well in India as in Europe.	Secs. 16, 19, 20, 27, 28, 29, 31, 33, 36, & 38 from and including the words "and for that purpose" to the end of the section.
21 Geo. III., Cap. lxx.	An Act to explain and amend so much of an Act, made in the thirteenth year of the reign of his present Majesty, intituled, An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe, as relates to the administration of justice in Bengal; and for the relief of certain persons imprisoned at Calcutta in Bengal, under a judgment of the Supreme Court of Judicature; and also for indemnifying the Governor-General and Council of Bengal, and all officers who have acted under their orders or authority, in the undue resistance made to the process of the Supreme Court.	Sections 9 to 16 (both inclusive). Secs. 19 to 26 (both inclusive).
33 Geo. III., Cap. lii.	An Act for continuing, in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further regulations for the government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and government of the towns of Calcutta, Madras, and Bombay.	Secs. 61, 137 from and including the words "nor shall it be lawful for any of His Majesty's subjects" to the end of the section, Secs. 155 and 159.
37 Geo. III., Cap. cxlii.	An Act for the better administration of justice at Calcutta, Madras, and Bombay; and for preventing British subjects from being concerned in loans to the Native Princes in India.	Sections 4 to 8 (both inclusive), Secs. 15, 17 to 26 (both inclusive), Sec. 30.
39 & 40 Geo. III., Cap. lxxix.	An Act for establishing further regulations for the government of the British territories in India, and the administration of justice within the same.	Sections 4, 6, 8, 10, 11, 17, 18, 19, 21, 22, 23, 24.
53 Geo. III., Cap. clv.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges; for establishing further Regulations for the government of the said territories, and the better administration of justice within the same; and for regulating the trade to, and from, the places within the limits of the said Company's Charter.	Secs., 98, 99, 101, 104, 108, 109, 113, and 122.
54 Geo. III., Cap. cv.	An Act to remove doubt as to the duties and taxes heretofore imposed and levied under the authority of the several Governments in the East Indies.	The whole.
55 Geo. III., Cap. lxxxiv.	An Act to amend so much of an Act of the thirty-third year of His present Majesty	The whole Act, except Section 1.

SCHEDULE—(Continued.)

Year and Chapter.	Title.	Extent of repeal.
	as relates to fixing the limits of the Towns of Calcutta, Madras, and Bombay; and also so much of an Act of the 39th and 40th year of His present Majesty, as relates to granting Letters of Administration to the effects of persons dying intestate within the several Presidencies in the East Indies, to the Registrar of the Ecclesiastical Courts; and to enable the Governor in Council of the said Presidencies to remove persons not being British subjects; and to make provision for the Judges in the East Indies in certain cases.	
4 Geo. IV., Cap. lxxi.	An Act for defraying the charge of retiring pay, pensions, and other expenses of that nature, of His Majesty's Forces serving in India; for establishing the pensions of the Bishop, Archdeacons, and Judges; for regulating Ordinations; and for establishing a Court of Judicature at Bombay.	Sections 8, 9, 10, and 14.
5 Geo. IV., Cap. cviii.	An Act for transferring to the East India Company certain possessions newly acquired in the East Indies, and for authorizing the removal of convicts from Sumatra.	Section 2.
6 Geo. IV., Cap. lxxxv.	An Act for further regulating the payment of the salaries and pensions to the Judges of His Majesty's Courts in India, and the Bishop of Calcutta; for authorizing the transportation of offenders from the island of St. Helena; and	Section 6.

SCHEDULE—(Continued.)

Year and Chapter.	Title.	Extent of repeal.
	for more effectually providing for the administration of justice in Singapore and Malacca, and certain Colonies on the Coast of Coromandel.	
7 Geo. IV., Cap. xxxvii.	An Act to regulate the appointment of Juries in the East Indies.	So much as has not been repealed
9 Geo. IV., Cap. xxxviii.	An Act to declare and settle the law respecting the liability of the real estates of British subjects and others, situate within the jurisdiction of His Majesty's Supreme Courts in India, as assets in the hands of executors and administrators, to the payment of the debts of their deceased owners.	The whole Act, except as to the estates of persons dying before 1st day of Jan. 1866.
11 Geo. IV., and 1 Wm. IV., Cap. lxxv.	An Act for the relief of the sufferers by the insolvency of Gilbert Rickets, Esq., formerly Registrar of the Supreme Court of Judicature at Madras.	The whole.
5 and 6 Wm. IV., Cap. vi.	An Act to indemnify the Governor-General and other persons in respect of certain acts done in the administration of the government of the British Territories in the East Indies subsequent to the 22nd day of April 1834, and to make those Acts valid.	The whole Act as far as it relates to British India.
11 & 12 Vic., Cap. xxi.	An Act to consolidate and amend the laws relating to Insolvent Debtors in India.	Sections 1, 65, 66, and 67.
17 & 18 Vic., Cap. civ.	An Act to amend and consolidate the Acts relating to Merchant Shipping.	Section 9, so far as it relates to British India.

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PART II.—ACTS.

Number and Year.	Title.	Extent of repeal.
X. of 1836.	Indigo contracts ...	Section 1.
XX. of 1836.	Revenue Sale Law ...	Sections 1 and 4.
VI. of 1837.	Land Revenue (Cuttack).	Section 2.
XXXVI. of 1837.	Madras Criminal Jurisdiction Act.	In Section 1, the words and figures "It is hereby enacted that from the 15th day of December 1837," and in Section 2, the words "from the said day."
XI. of 1838.	Ameens, Bengal ...	Section 1, and in Section 2 the words "And it is hereby enacted that."
XVI. of 1838.	Bombay Judiciary ...	In Section 1, Clause 1, the words "It is hereby enacted, in modification of the rules contained in Chapter VII., Regulation XVII. of 1827 of the Bombay Code, that" In Section 5, the words "without further costs of stamps to the parties except on new ex-

SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
		hibits, if any such should be allowed to be filed," and from and including the words "but if an appeal" to the end of the section.
XIX. of 1838.	Bombay Coasting Vessels.	Section 1.
XXIX. of 1838.	Salt Department, Bengal.	Section 1.
XXXII. of 1838.	Justices of the Peace...	Sections 2 and 3.
VII. of 1839.	Tahsildars, Madras ...	Section 1.
XXIV. of 1839.	Ganjam and Vizagapatam.	Section 1.
XVI. of 1840.	An Act concerning the management of Convicts transported to places within the territories of the East India Company.	Section 4.
IX. of 1841.	An Act for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the service of the East India Company.	The first twenty-one words in Section 1, and Section 18.
XII. of 1841.	An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.	Section 1.
XXIX. of 1841.	An Act for amending such parts of the Bengal and Madras Codes as concern the dismissal of suits and appeals for neglecting to proceed in the same.	Section 3 down to & including the words "are repealed, and"

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SCHEDULE—(*Continued.*)

Number and Year.	Title.	Extent of repeal.
XVII. of 1842.	An Act relative to the number and powers of the Revenue Commissioners under the Presidency of Bombay.	Section 1, and in Sections 2 and 3 the words "and it is hereby enacted that"
XI. of 1843.	An Act for regulating the service of hereditary officers under the Presidency of Bombay.	Section 1.
XI. of 1844.	An Act for the improvement of the administration of Justice and despatch of business in the Supreme Court of Judicature at Fort William in Bengal.	The whole.
XVI. of 1844.	An Act for increasing the Excise and Import duties heretofore payable to the Government on salt manufactured within, or imported into, the territories subject to the Government of the Presidency of Bombay.	Sections 1, 3, and 5.
XVIII. of 1844.	An Act for the better control and management of Gaols within the Bengal Presidency.	Section 1, and in Section 2 the words "and it is hereby enacted that"
XX. of 1844.	An Act to amend the law relating to advances *bonâ fide* made to Agents entrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 and 6 Victoria, C. 39, as altered by this Act.	Section 9.
XV. of 1845.	An Act for declaring and enacting the privileges of Native Officers and Soldiers of the Armies of the three Presidencies in respect of judicial and revenue proceedings.	Section 6.
VIII. of 1846.	An Act for determining the duration of the existing Settlement of the North-Western Provinces.	Section 1 so far as it relates to Hissar, Saharanpore, Moozuffernugger, Meerut, Bulundshuhur, Allyghur, Bijnore, Budaon, Bareilly, Shajehanpore, Furruckabad, Allahabad, Goruckpore, and Azimghur.
I. of 1847.	An Act for the establishment and maintenance of Boundary Marks in the North-Western Provinces of Bengal.	In Sec. 6, the words and figures "under Act IV. of 1840."
IX. of 1847.	An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa.	Section 8.
XX. of 1847.	An Act for the encouragement of learning in the territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called copyright therein.	Section 17.
IV. of 1848.	An Act for regulating Coroners' Juries.	In Sec. 2, the words and figures "according to the provisions of Act No. II. of 1839."
XVI. of 1848.	An Act to remove certain restrictions on the Salt trade.	The whole.

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SCHEDULE—(Continued.)

Number and Year.	Title.	Extent af repeal.
XVIII. of 1848.	An Act for the administration of the Estate of the late Nawab of Surat, and to coutinue privileges to his family.	Secs. 3 & 4.
I. of 1849.	An Act to provide more effectually for the punishment of offences committed in Foreign States.	Section 1.
VI. of 1849.	For securing Military and Naval Pensions and Superannuation Allowances.	Secs. 1 & 4.
XI. of 1849.	For securing the Abkarry revenue of Calcutta.	Section 1.
IX. of 1850.	An Act for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.	Section 7. In Section 17, the words "by action of debt or on the case"
XI. of 1850.	An Act to amend Act X., 1841.	Section 1.
XII. of 1850.	For avoiding loss by the default of Public Accountants.	Section 6.
XIX. of 1850.	Concerning the binding of Apprentices.	Section 6.
XXV. of 1850.	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII., 1819, and Act IV., 1846.	Section 1.
XXVI. of 1850.	An Act to enable improvements to be made in towns.	Section 1.
XXXIII. of 1850.	An Act for amending the forms necessary for the sale of Putnee Tenures in Bengal.	Sections 2 and 3.
XXXVII. of 1850.	For regulating inquiries into the behaviour of Public Servants.	Section 1.

SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XLIV. of 1850.	An Act for consolidating the Board of Customs, Salt and Opium, and the Sudr Board of Revenue in the Lower Provinces of Bengal.	Section 1.
VI. of 1851.	Respecting certain land in Bombay called Foras Land.	The whole.
VIII. of 1851.	An Act for enabling Government to levy tolls on Public Roads and Bridges.	Section 1.
V. of 1852.	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	Section 26.
XV. of 1852.	An Act to amend the Law of Evidence.	Section 14.
XVI. of 1852.	An Act for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company.	Secs. 10 and 27.
XIX. of 1852.	An Act for securing the Abkarry revenue of Madras.	Section 1.
XXIII. of 1852.	To authorize and empower the Governors in Council of the respective Presidencies of Madras and Bombay to mitigate or discharge fines, amerciaments, &c., imposed by the Supreme Courts, or any other Courts of Justice at Madras and Bombay respectively.	The preamble and Section 1.
XXIX. of 1852.	An Act to amend the law respecting the Circuits of Judicial Commissioners in the Presidency of Bombay.	Section 1.

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SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XI. of 1853.	An Act to facilitate the removal of nuisances and encroachments below high-water mark in the islands of Bombay and Colaba.	In Section 7, the words "the East India Company as trustees for"
XX. of 1853.	An Act to amend the law relating to Pleaders in the Courts of the East India Company.	Section 1.
V. of 1854.	An Act to amend Act No. V. of 1838 relating to the Bengal Bonded Warehouse Association.	Section 1.
VII. of 1854.	An Act for the apprehension, within the territories under the government of the East India Company, of persons charged with the commission of heinous offences beyond the limits of the said territories, and for delivering them up to justice, and to provide for the execution of warrants in places out of the jurisdiction of the authorities issuing them.	Section 24.
XIII. of 1854.	An Act to repeal Act No. VI. of 1852, and to make provision for defraying the cost of the Light-house on Pedra Branca and for maintaining the same, and also a Floating Light established in the Straits of Malacca to the west of Singapore, and for the establishment and maintenance of such further Lights in or near to the said Straits as may be deemed expedient.	Section 1.
XVI. of 1854.	An Act to amend Regulation XI. of 1831 of the Bengal Code.	Section 1.
XVIII. of 1854.	An Act relating to Railways in India.	Section 39.

SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XXIV. of 1854.	An Act to prohibit the possession of certain offensive weapons in Malabar.	In Sec. 1, from and including the words "and every person" to the end of the section. In Sec. 2 the words "After such date."
XXVII. of 1854.	An Act to amend the law relating to the Nazim of Bengal.	Section 1.
XXX. of 1854.	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martaban, and Tenasserim Provinces.	Sections 1 and 12.
XXXI. of 1854.	An Act to abolish real actions and also fines and common recoveries, and to simplify the modes of conveying land in cases to which the English law is applicable.	Section 1.
II. of 1855.	An Act for the further improvement of the Law of Evidence.	Section 17.
XXII. of 1855.	An Act for the regulation of Ports and Port Dues.	Sec. 1, & in Sec. 35 the words "or of the Hon'ble Company," Sec. 43.
XXIV. of 1855.	An Act to substitute penal servitude for the punishment of transportation in respect of European and American Convicts, and to amend the law relating to the removal of such Convicts.	Section 16.
XXVI. of 1855.	An Act to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors.	So much of Sec. 5 as relates to persons dying in the service or in the Marine service of the East India Company.

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SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XXVIII. of 1855.	An Act for the repeal of the Usury Laws.	Secs. 1, 7, 8, and the schedule.
XXXII. of 1855.	An Act relating to embankments.	Section 1.
XXXVII. of 1855.	An Act to remove from the operation of the General Laws and Regulations certain districts inhabited by Sonthals and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose.	Section 6.
VIII. of 1856.	An Act for the better control of the Gaols within the Presidencies of Fort St. George and Bombay.	Section 1.
XI. of 1856.	An Act for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India.	In the title and the preamble the words "and of the East India Company."
XII. of 1856.	An Act to amend the law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William.	Section 1.
XIII. of 1856.	An Act for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.	Section 1 from the beginning down to and including the words "operation, and," and the schedule.
XX. of 1856.	An Act to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazaars in the Presidency of Fort William in Bengal.	Section 1 from the beginning down to and including the words "provided that."

SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XXI. of 1856.	An Act to consolidate and amend the law relating to the Abkarry revenue in the Presidency of Fort William in Bengal.	Sections 1 and 89.
III. of 1857.	An Act relating to trespass by Cattle.	Sections 1 and 22.
IV. of 1857.	An Act to amend the law relating to the duties payable on Tobacco, and the retail sale and warehousing thereof in the Town of Bombay.	Section 1. In Section 5, the words and figures "within the meaning of Act XXV. of 1836."
X. of 1857.	An Act to amend Act XXXVII of 1855.	Section 1 from the beginning down to and including the words "this Act, and"
XIII. of 1857.	An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal.	Section 1.
XXIX. of 1857.	An Act to make better provision for the collection of Land Customs on certain foreign frontiers of the Presidency of Bombay.	Section 1.
XXX. of 1857.	An Act for the levy of Port Dues and Fees in the Port of Calcutta.	Section 7 from the beginning down to and including the words "said date."
XXXI. of 1857.	An Act for the levy of Port Dues and Fees in the Port of Bombay.	Section 6 from the beginning down to and including the words "said date."

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SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XXXIV. of 1857.	An Act relating to the sale of Ganjah in the Presidency of Bombay.	Section 1.
XXXV. of 1857.	An Act for the levy of Port Dues in the Ports of Moulmein, Rangoon, Kyouk, Phyoo, Akyab, and Chittagong.	Section 5 from the beginning down to and including the words "said date."
II. of 1858.	An Act for the levy of Port Dues in certain Ports in the Province of Cuttack.	Section 5. Section 6 from the beginning down to and including the words "said date."
III. of 1858.	An Act to amend the law relating to the arrest and detention of State Prisoners.	Section 1.
VIII. of 1858.	An Act for the levy of Port Dues and Fees in the Port of Kurrachee.	Section 7. Section 8 from the beginning down to and including the words "said date."
XV. of 1858.	An Act for the levy of Port Dues in the Port of Aden.	Section 6 from the beginning down to and including the words "said date."
XXVIII. of 1858.	An Act for the maintenance of a Police Force for the Port of Madras.	Section 11.
XXXV. of 1858.	An Act to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.	Section 1.

SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XL. of 1858.	An Act for making better provision for the care of the Persons and Property of Minors in the Presidency of Fort William in Bengal.	Section 1.
I. of 1859.	An Act for the amendment of the law relating to Merchant Seamen.	Section 1.
III. of 1859.	An Act for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those officers Registers of Deeds.	In Section 11, the words "or who shall be appointed Register of Deeds," and the words "and Registers of Deeds respectively."
VIII. of 1859.	An Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.	In Sections 300 and 82, the words "in any Court of Judicature established by Royal Charter or" Secs. 300 and 87.
X. of 1859.	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	Sections 1 and 167.
XI. of 1859.	An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.	Section 1.
XII. of 1859.	An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty.	Section 1.

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SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XIV. of 1859.	An Act to provide for the limitation of suits.	Secs. 18, 21, and 23, and, in Sec. 19, the proviso.
XVII. of 1859.	An Act to amend the law for the realization of revenue from abkarry in the island of Bombay.	Section 1.
XX. of 1859.	An Act for the suppression of Outrages in the District of Malabar, in the Presidency of Fort St. George.	Section 1.
XXII. of 1859.	An Act to amend Act I. of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay).	Section 1.
XXIV. of 1859.	An Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George.	Secs. 2 and 3, and the schedule down to and including the words "said clause."
XXV of 1859.	An Act to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal.	Section 19.
II. of 1860.	An Act to amend the law relating to the carriage of Passengers by Sea.	In Section 1, the words and figures "under Act XV. of 1842," "under Act XXI. of 1844," "under Act XXXI. of 1855."
VIII. of 1860.	An Act for regulating the establishment and management of Electric Telegraphs in India.	Section 1.

SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
XXIII. of 1860.	An Act to amend Act XXI. of 1856 (to consolidate and amend the law relating to the Abkarry revenue in the Presidency of Fort William in Bengal).	Section 1, from the beginning down to and including the word "repealed," and the schedule.
XXV. of 1860.	An Act for the levy of Port Dues in the Port of Bassein.	Section 5 from the beginning down to and including the words "said date."
XXVIII. of 1860.	An Act for the establishment and maintenance of Boundary Marks, and for facilitating the settlement of boundary disputes in the Presidency of Fort St. George.	Sections 1 and 33.
XXXI. of 1860.	An Act relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	Sections 1, 52, and 55.
XLV. of 1860.	The Indian Penal Code.	In Section 5, the words "or of the East India Company, or of any Act for the government of the Indian Navy."
XLVI. of 1860.	An Act to authorize and regulate the emigration of Native Labourers to the French Colonies.	Section 1.
XLVIII. of 1860.	An Act to amend Act XIII. of 1856 (for re-	Section 1, from the

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SCHEDULE—*(Continued.)*

Number and Year.	Title.	Extent of repeal.
	gulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca).	beginning down to and including the words "repealed and"
L. of 1860.	An Act to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal.	Section 1.
X. of 1861.	An Act to repeal certain Regulations and Acts relating to the procedure of the Courts of Civil Judicature not established by Royal Charter.	The whole.
XIV. of 1861.	An Act to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the General Regulations and Acts.	In Sec. 4, the words "shall not call for the futwah of its Law Officer and" Section 7.
XVI. of 1861.	An Act for licensing and regulating Stage carriages.	Sec. 22.
XVII. of 1861.	An Act to amend Act XIV. of 1843 (for regulating the Customs Duties in the North-Western Provinces).	Section 3.
XIX. of 1861.	An Act to provide for a Government Paper Currency.	In the preamble from and including the words "and whereas due notice" down to and including the words "hereinafter provided" Section 1. In Section

SCHEDULE—*(Continued.)*

Number and Year.	Title.	Extent of repeal.
		2 the words "After the passing of this Act," and the words "except the Banks of Bengal, Madras, and Bombay, up to the said 1st day of March 1862, and"
XXIII. of 1861.	An Act to amend Act VIII. of 1859 (for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter).	Sections 1 and 43.
XXV. of 1861.	An Act for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 445 except so far as it empowers the Governor-General in Council to extend the Act.
IV. of 1862.	An Act for regulating the Bank of Bengal.	Sections 1 and 42, and the second proviso in Section 11.
XIII. of 1862.	An Act to provide for a new Silver and a new Copper Coinage.	Section 1.
XX. of 1862.	An Act to provide for the levy of Fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain Sections of Act VIII. of 1859 in the said High Court.	Sections 7, 11, and 12.
XXIII. of 1862.	An Act to amend Act XI. of 1862 (to amend the duties of Customs on goods imported and exported by Sea).	The whole.

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SCHEDULE—(Continued.)

Number and Year.	Title.	Extent of repeal.
I. of 1863.	An Act to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said territory.	Sections 1 and 28.
VI. of 1863.	An Act to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.	Sections 2, and 230.
VIII. of 1863.	An Act for the amendment of the law relating to the confinement of Prisoners sentenced by Courts acting under the authority of Her Majesty, and by certain other Courts, and of Prisoners convicted of offences in Native States.	Section 1.
XII. of 1863.	An Act to bring the Pergunnahs of Mahoba and Jeitpore, in the District of Humeerpore, under the operation of the General Regulations.	Sections 2, 3, 4, 5, 6.
XV. of 1863.	An Act to amend Act I. of 1859 (for the amendment of the law relating to Merchant Seamen).	Section 1.
XIX. of 1863.	An Act to consolidate and amend the law relating to the partition of Estates paying revenue to Government in the North-Western Provinces of the Presidency of Fort William in Bengal.	Section 1, and the first eight words of Section 2. Section 50.
XX. of 1863.	An Act to enable the Government to divest itself of the management of Religious Endowments.	Section 1.
XXIV. of 1863.	An Act to amend Act I. of 1863 (to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said territory).	Sections 4 and 5.
VII. of 1864.	An Act for regulating the importation and manufacture of alimentary salt in the territories administered by the Chief Commissioner of the Central Provinces.	Section 1.
XII. of 1864.	An Act to give further effect to the provisions of Act IV. of 1863 (to give effect to certain provisions of a treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah.	Section 2.
XIII. of 1864.	An Act to consolidate and amend the laws relating to the emigration of Native Labourers.	Sections 1 and 84, & Schedule A.
XVII. of 1864.	An Act to constitute an Office of Official Trustee.	Section 2.
XXII. of 1864.	An Act to make provision for the administration of Military Cantonments.	Secs. 2, 37, and the schedule.
XXIV. of 1864.	An Act relating to the administration of certain Districts under the Government of the Lieutenant-Governor of the North-Western Provinces.	Section 15.
XXVIII. of 1865.	An Act to provide for the extension of Act XXI. of 1856 (to consolidate and amend the law relating to the Abkarry revenue in the Presidency of Fort William in Bengal), to the Provinces under the control of the Lieutenant-Governor of the Punjab.	Section 3.
XI. of 1865.	An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature.	Section 2, from the beginning down to & including the words "Provided that" and from and in-

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SCHEDULE—*(Continued.)*

Number and Year.	Title.	Extent of repeal.
		cluding the words "and all suits" down to the end of the section.
XIII. of 1865.	An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original Criminal jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.	In Sec. 9, the words "from & after the date on which this Act shall come into operation," and, in Sections 22, 23, 24, & 44, the words "From and after the commencement of this Act" Secs. 45 & 46.
XIV. of 1865.	An Act to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces.	Section 24.
XV. of 1865.	An Act to define and amend the law relating to Marriage and Divorce among the Parsees.	In Section 7, the words "who may be the Registrar appointed under Act XVI. of 1864 *(to provide for the registration of assurances.)*" In Section 53, the words "shall commence and take effect on the 1st day of September 1865, and"

SCHEDULE—*(Continued.)*

Number and Year.	Title.	Extent of repeal.
XIX. of 1865.	An Act to define the jurisdiction of the Courts of Judicature of the Punjab and its Dependencies.	Sections 24 and 25.
XX. of 1865.	An Act to amend the law relating to Pleaders and Mookhtars.	Section 3 and the first schedule.
IV. of 1866.	An Act to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies.	Sections 45, 52, and 54.
V. of 1866.	An Act to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India.	In Section 2, the words "from and after the 1st day of May 1866."
X. of 1866.	The Indian Companies' Act.	Sections 219, 220, 221, and 222, and the third schedule.
XI. of 1866.	An Act to repeal Act No. IV. of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company).	The whole.
XIV. of 1866.	The Indian Post Office Act, 1866.	In Sec. 1, the words "shall come into operation on the 1st day of May 1866, and" Section 3.
XX. of 1866.	The Indian Registration Act, 1866.	Sections 3 and 98 from the beginning down to and including "notwithstanding," Sec. 102.

SCHEDULE—*(Continued.)*

Number and Year.	Title.	Extent of repeal.
XXII. of 1866.	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the Cantonments of Secunderabad, Trimulgherry, and Arungabad.	In Sec. 1, the words "From and after the passing of this Act."
XXVI. of 1866.	An Act to legalize the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of subordinate proprietors in that Province.	Section 2.
XXVII. of 1866.	An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in mortgagees and trustees, in cases to which English law is applicable.	Section 1.
XII. of 1867.	An Act to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of Her Majesty's High Courts of Judicature at Fort William in Bengal, and Madras and Bombay.	Section 2 and the schedule.
XVIII. of 1867.	An Act to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division.	Section 2.
XXIV. of 1867.	An Act to consolidate and amend the law relating to the office and duties of Administrator-General.	Section 2, and the schedule.
XXV. of 1867.	An Act for the regulation of Printing Presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.	Sections 2 and 23.

SCHEDULE—*(Continued.)*

Number and Year.	Title.	Extent of repeal.
XXXIV. of 1867.	An Act to repeal Act No. XIX. of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable.	The whole.
XXXV. of 1867.	An Act to provide temporary assistance to the Financial Commissioner of the Punjab.	The whole.
III. of 1868.	An Act to authorize the Local Government of the Punjab to invest any person with the powers of an Assistant Commissioner or Tahsildar.	Section 3.
VIII. of 1868.	An Act for repealing certain enactments which have ceased to be in force or have become unnecessary.	The whole.
XI. of 1868.	An Act to exempt Timber and Woods from Import Duty.	The whole.
XIII. of 1868.	An Act to exempt the King of Oudh from the jurisdiction of the Civil Courts, and for other purposes.	Section 1.
XVI. of 1868.	An Act to consolidate and amend the law relating to Principal Sudr Ameens, Sudr Ameens, and Munsiffs in Bengal, and for other purposes.	Section 1 and the schedule.
XVII. of 1868.	An Act to appoint a Commission to inquire into the failure of the Bank of Bombay.	The whole.
XVIII. of 1868.	An Act for investing the Commissioner and Assistant Commissioner of the Neilgherry Hills with the powers of a Court of Small Causes.	Section 5.
XIX. of 1868.	An Act to consolidate and amend the law relating to rent in Oudh.	Section 2.
XX. of 1868.	An Act to give validity to the levy of certain duties in Lucknow.	The whole.

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SCHEDULE—*(Continued.)*

Number and Year.	Title.	Extent of repeal.
XXIII. of 1868.	An Act to give validity to certain Abkarry Rules in British Burmah.	In the preamble, the words "and to indemnify all officers, farmers, and other persons who have acted under them, or under any such rules previously published or enforced under the same authority," and Section 2.
XXV. of 1868.	An Act to define the jurisdiction of the Courts in Coorg.	Sec. 24.
XXVIII. of 1868.	An Act to define and amend the law relating to the tenancy of land in the Punjab.	Section 4.
II. of 1869.	An Act for the appointment of Justices of the Peace.	Section 2 and the schedule.
III. of 1869.	An Act for the maintenance of the Rural Police in the North-Western Provinces.	Section 2.
V. of 1869.	The Indian Articles of War.	Part I., Clause (*c*), paragraphs 1, 2, and 3.
VI. of 1869.	An Act to amend the law relating to the Emigration of Native Labourers.	Secs. 10 and 11.
VII. of 1869.	An Act to give validity to certain Rules relating to Forests in British Burmah.	In the preamble, the words "and to indemnify the officers and other persons who have acted under them;" Section 2.
VIII. of 1869.	An Act further to amend the Code of Criminal Procedure.	Section 2, paragraph 1.
XI. of 1869.	An Act to make better provision for the collection of Land Customs on certain foreign frontiers of the Presidencies of Fort St. George and Bombay.	Section 2.
XIV. of 1869.	An Act to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.	Section 2 and the schedule.
XVIII. of 1869.	An Act for imposing Stamp Duties on certain Instruments.	Sec. 2 and the third schedule.
XX. of 1869.	An Act to provide for the good order and discipline of Volunteer Corps, and to invest them with certain powers.	Section 3.
XXII. of 1869.	An Act to remove the Garo Hills from the jurisdiction of the tribunals established under the General Regulations and Acts, and for other purposes.	Sections 2 and 3.
XXIV. of 1869.	An Act to enhance the price of Salt in the Presidency of Fort St. George and the duty on Salt in the Presidency of Bombay.	Section 1.
VII. of 1870.	The Court Fees' Act.	Sec. 2 and the third schedule.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

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THE

MADRAS REVENUE REGISTER.

No. 11.] MADRAS :—TUESDAY, NOVEMBER 15, 1870. [Vol. IV.

THE QUIT-RENT SYSTEM OF THE TOWN OF MADRAS.

We should like to know how many of the well-informed denizens of this well-informed city are aware on what system, or rather want of system, the quit-rent of the town of Madras is levied. Our attention has been seriously drawn to this question by being told of the unhappy fate which overtook the officer who was immediately in charge of the Quit-rent Department, who fell a victim —not to his want of capacity to control—not to his love of greed, or other moral turpitude—but simply to the curse of *mamool,* to the bondage of a sort of shopman arrangement, which appears to have been handed down from one official to another, since the township of Madras passed from the hands of the Nawabs of the Carnatic to the first merchant factors and agents, who settled themselves here as the representatives of the East India Trading Company. It was in vain he protested against the system, as not calculated to afford that check which alone would be sufficient to safeguard the public monies collected from day to day by the actual tax-gatherers. He asserted, and with truth, that the onerous duties more immediately connected with his responsible position, in a city comprising a large European population, were too many and too engrossing to permit of his individually going over each item of money realized and remaining to be accounted for. His protest was unheeded, and a system, which was good enough for our grandfathers, was allowed to linger on even in the days when we—the grandchildren—have attained the full strength of our manhood, and are able to grapple with new systems for ourselves. At last, a very serious defalcation was discovered by this very officer himself, for which he was rewarded by the immaculate Board of Revenue with ignominious dismissal from the public service, an unhappy fate from which he has been partially rescued by the more thoughtful members of Government, who, on a consideration of the merits of his case, have restored him to the service, but in another, less responsible, and less paid appointment. The land revenue of the town and environs of the city, constituting the present Collectorate of Madras, appears to have been collected, and is still collected, by a polite invitation to landholders to pay their rents, this invitation being sent out in the shape of a bill—Dr. so and so, Cr. so and so—placed in the hands of an ordinary bill collector, who dances attendance on each debtor from day to day according to the extent of the latter's amiability and his exact measure of personal convenience. The collections are paid into the cutcherry treasury by the several bill collectors, who

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merely hand in a memorandum of the amount realized and the number of bills remaining in their hands unrealized. All that the overburdened officer in charge of the Quit-rent Department could do was to note, in a sort of slipshod manner, the amount collected by each bill collector, and the number of bills remaining uncollected that day in his hands. When it is borne in mind that these bills represent petty fractional sums ranging from a few annas upwards, it may be easily conceived that it must require a very strong staff of accountants to apply the proper checks and to guard against embezzlement. As it happened, there were about half a dozen bill collectors on very small salaries under the orders of a goomastah, or clerk, very little better paid than themselves. As a staff of this kind could not check itself, and the head of the department could do no more than perfunctorily ascertain the number of bills in each man's hands, without inquiring into the particulars of each bill, it follows that a very enormous amount of temptation was placed in the hands of these men. Considering their social position and the temptation to which they were thus exposed, they would have been more than human if they did not largely avail themselves of the opportunities thrown in their way; and, to escape what little danger of detection the system of the cutcherry interposed, they borrowed from one another the requisite number of bills for which each man was accountable. Years of embezzlement and peculation must have gone on before the day of reckoning arrived. By a turn of good luck, as far as the Government was concerned, the head of the Quit-rent Department pounced down upon his myrmidons, detected them in their system of plunder, and, in bringing them to justice for their misdeeds, worked himself out of his own appointment and prospects. The evil of all this was to be traced to the inherent defect in the system itself. Why should the Government issue bills for the collection of its revenue? Is it a tradesman dunning its customers? Is there any rule compelling the officers of the State within the municipal limits of the town of Madras, any more than in any other part of the Presidency, to present bills for the purpose of collecting the land revenue due for each year? We know of no such rule, and we can only conjecture that the system had its rise from the circumstance that when Madras was built the merchant grantees were not in the position of a Government feeling itself entitled to call upon its lieges to come in and pay their taxes under certain pains and penalties. With the instincts of commercial men they issued bills to settlers within their limits for the quit-rent leviable on the land taken up and occupied. It might be, too, that many European gentlemen of rank and influence took up land in the infant settlement; they could not be peremptorily called on to pay in their taxes like ordinary ryots in a ryotwari district; and so a polite system of presenting bills all round obtained. The collectors of land revenue in the town of Madras are thus in exactly the same position as the bill collectors of any large or petty shop in Popham's Broadway or on the Mount Road. They actually dance attendance on the State's debtors with their receipted bills in their hands, and are in many instances turned from the door with the questionably polite message of "Come another day." Sometimes it is John Brown gathering up facts for his next report—"Oh I am too busy," he says, "let the quit-rent man call another day." At another time the dismissal is rather sharp work, for General Bounce is not quite in a convenient humour, and he sets his bull dog on the messenger of Government, who betakes himself to his heels with an alacrity scarce befitting his dignity as a respon-

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sible officer of the State. Independently of the facilities to embezzlement that collection of the quit-rent by bill collectors amply affords, the undignified attitude the State assumes in sending out its officers in the shape of petty retail bill collectors, who are turned from the debtor's door and told to call another day, or are exposed to other still greater annoyances, is of itself sufficiently grave to put an end to the system at once. The quit-rent of the Collectorate of Madras is absolutely the land revenue of the town and its environs, and should be collected into the Government Treasury in the same manner that the rent of the ryot is got in all over the Presidency; in other words, landholders in Madras should be called upon to send in or pay their rents into the cutcherry and take their receipts for the same. Not only will this simple and effective system put an end to embezzlement; but it will ensure a speedier realization of the Government revenue, and enable its officers to turn their attention to more important work than watching and checking peccant bill collectors. We have no doubt that the present able Deputy Collector, immediately in charge of the Collectorate of Madras, will prominently bring the matter to the notice of the authorities; and it is to be hoped that those charged with the protection of the public revenues will not be slow to accept and act upon his advice. They can have no hesitation in doing so, because Act VI of 1867 has been expressly enacted to secure the land revenue of Madras, by providing for its collection in as summary a manner as in other parts of the Presidency; it being declared that the land revenue has priority over all claims upon the land; that the land itself is the security for the revenue assessed thereon; and that it is liable to be sold for the discharge of arrears. We would propose that, in the spirit of this enactment, a Notification should be published, giving sufficient time however, announcing that the existing practice of presenting bills for quit-rent due by landholders is to cease from a certain date, and that in lieu thereof landholders will have to send in their rents before the close of the fusly, or Revenue year, for which they are due, on pain of being proceeded against under the provisions of Act VI of 1867. Opportunity should also be taken to warn defaulters that arrears will bear interest at six per cent, and that they will be saddled with all charges of collection.

While efficient means such as these appear to us to be proper for realizing the public revenue, consistently with the dignity of the State and its officers and the safety of the revenue itself, we are emphatically opposed to the principle on which the quit-rent is assessed; and it is here that the general ignorance of the citizens as to the nature of the tax which they are called upon to pay is most striking. We believe that we are safe in asserting that not ten of the rate-payers of the town of Madras know that, in paying quit-rent to the Government, they are not paying a tax on the land occupied by them, but are actually contributing a species of income tax calculated on the value, not of the land, but of the building upon the land. It is true that this objectionable assessment prevails in the town of Madras only, and not in the suburbs; but why should landholders within the town be more heavily taxed than anywhere else? The practice now is to value the building and ground, probably with the view of ascertaining what rental the premises are producing, or are capable of producing, and then levy quit-rent accordingly. Thus the quit-rent departs from its character of quit-rent, and assumes the nature of a real income tax, namely, an impost upon profits. Is it not most unjust on the part of Government to levy a tax on the footing of rent for the bare ground taken up, and, under cover of

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it, to call upon the holder to pay a percentage of his profits? And this species of income tax is paid three times by the unhappy landholder in Madras upon the self-same income—once to the Government in the shape of Imperial income tax; once to the Municipality in the shape of assessment; and once again to the Government under the guise of a quit-rent. Upon what principle can this system, or want of system, be defended? It may be worthy of a Mahomedan Government, but is certainly not consistent with the character of English rule, where, at all events, we expect equality of action, even if the burdens are heavy, in consequence of the pressure of the times. This unjust collection must at once be abandoned. There is no other law to support it but the too long inexorable, but happily now efféte, excuse of established custom. There are other inequalities in the land-tax of Madras which require attention: for instance, we cannot see why one piece of land in the suburbs of Madras should pay quit-rent according to a particular scale, while the very neighbouring plot is assessed on quite another standard. We feel that these subjects of amendment will not escape the sharp eyes of the present Deputy Collector; but they need to be mentioned, not only to stir up the energies of even an active minded officer, but to gain for him the support of those in authority who have to pronounce upon his proposals.

CORRESPONDENCE.

To the Editor of the Madras Revenue Register.

DEAR SIR,

With reference to the letter of the Purghy Advocate, which appeared in your last issue, I do not think that there should be any shadow of doubt on the question raised by him, as the law on the subject is very clear. It is distinctly laid down in Act No. II of 1864 that all lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances. All other sales of property, of whatever kind, in execution of a decree or other process of Court, are strictly in the nature of private transfers; they are not in the nature of public sales for *revenue*. *They* convey to the purchaser nothing beyond that which belonged, up to the moment of sale, to the person whose interests are sold, and *they* confer no right or privilege which was not *vested* in that person. They give no warranty of title, and they only place the purchaser in the same position, with respect to the thing sold, in which they found the defendant.

I am, Sir,

Your obedient servant,

A. PLEADER.

NARRAINDAVERKERRY,
BELLARY DISTRICT,
20*th October* 1870.

To the Editor of the Madras Revenue Register.

DEAR SIR,

Adverting to the letter of your Tinnevelly *Inquirer* which appeared in your last issue, I beg to observe that the rule for construing new laws, differing wholly or partially from former laws, is so subtle as to require great attention. If any Legislative Act should be enacted differing from a former Regulation, either wholly or partially, the new Act is to be considered as a virtual repeal of the old one, as far as it may differ from the latter, provided the new Act be couched in the negative terms, or by its matter necessarily imply a negative; I consequently think the valuation of the lands in question must be governed by Note (*a*), Article 11, Schedule B, Act XXVI of 1867, that is, eight times the revenue due thereon to Government, the revenue payable thereon being unsettled or temporary. This opinion renders an answer to the second question unnecessary. As to the third question, namely, what is the force and legal meaning of the phrase, "Unless, and until, the contrary shall be proved," in the note (*a*) in Schedule B, Act XXVI of 1867, I take the meaning of it to be simply this—in suits under Act XXVI of 1867, for immoveable property paying revenue to Government where the settlement is temporary, eight times the revenue so payable, and, where the settlement is permanent, ten times the revenue so payable; and, in a suit for immoveable property not paying revenue to Government, twenty times the annual net profits of such property shall be taken to be the market value, unless the contrary be proved by any party to the suit, or by the investigation made by the Court of its own motion. In such cases the Court is either to refund the excess stamp duty paid, or require plaintiff to pay so much additional in stamps as would have been payable

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had the said market value or net profits been correctly estimated. In order to ascertain the market value, or correct amount of the Government revenue, or the annual net profits of any such property as is described in note (*a*) under that Act, the Court could either, of its own motion, or on the application of any party to the suit, issue a commission to any proper person directing him to make such local or other investigation as may be necessary and report thereon to the Court. If, in the result of any such investigation, the Court should find that the market value or net profits had been erroneously estimated for the purpose of computing the stamp duty, the Court should either (as the case may be) refund the excess paid as such duty, or require the plaintiff to pay so much additional stamp duty as would have been payable had the said market value or net profits been correctly estimated, and, in such a case, the suit should be stayed until the additional duty be paid. The intention of the legislature is to be gathered from a consideration of the whole statute. As Lord Coke expresses it, " No one can rightly understand a part until he has again and again read through the whole." The maxim of the law *ex antecedentibus et consequentibus fit optima interpretatio*, may as well be consulted. I cannot conceive how the phrase can convey the meaning put on it by the defendant, for the express mention of one thing implies the exclusion of another. With reference to the fourth question, I must say there is no clear provision as to how the Court should act; but, nevertheless, I think the insufficient stamp duties payable in suits filed, when Act XXVI of 1867 was in force, should be levied according to the provisions of the new Court Fees' Act, under the authority vested in the Court by Section 12. I am decidedly of opinion that they could not be levied under Act XXVI of 1867, as it had been repealed when the suits came on for hearing and valuation was disputed. In such cases, Clause 1, Section 12, of the Court Fees' Act can be brought into play. It provides that every question relating to valuation for the purpose of determining the amount of any fee, chargeable under Chapter III, on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit. Now as to the last and fifth question. I understand from the statement of *Inquirer* that the suit was instituted to recover possession of fifty palmyra trees paying to Government annually Rupees 40. Immoveable property includes land and things attached to the earth, or permanently fastened to anything which is attached to the earth. So palmyra trees are immoveable property paying revenue to Government; and, therefore, they should be valued under the provisions of Clause 5, Section 7 of the Court Fees' Act, for the law always intends what is agreeable to reason. A question may arise whether the trees, together with the land on which they stand, could not be taken to be a garden and valued accordingly. I emphatically say no, because garden means a piece of ground appropriated to the cultivation of herbs or plants, fruits and flowers, and nothing more.

I am, Sir,

Your obedient servant,

AN ADVOCATE.

NARRAINDAVERKERRY,
BELLARY DISTRICT,
20*th October* 1870.

It is a question whether, under the new Act, Courts are likely to refund excess duty paid in.—ED. *R. R.*

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND INNES, J.

Right to water—User—Evidence of tenants as against interest of landlords.

A sued B for damages for loss of crop in consequence of B's obstructing a channel supplying A's tank. B denied the existence of a channel, but admitted a mere boundary ridge, the repairing of a breach in which would flood his land—

HELD *that A's evidence was not sufficient to establish long user, inasmuch as the only reliable evidence on his side was that given by the tenants of the defendant in a former suit, which evidence, containing admissions affecting their landlord's rights, could not be used against him.*

R. A. 92 *of* 1869.

V. Venkatanarayana Reddy *v.* C. Vencata Reddy and nine others.

THE plaintiff in this case claimed the estimated cost of restoring the channels and the value of the produce he alleged he had lost, as his tank had not received its ordinary supply of water in consequence of the defendants having breached one channel and obliterated another. The damages were laid at Rupees 1,584. The plaint set forth that the tank was what was termed in the Revenue Department "a ruined tank," and, therefore, liable to be given to any ryot who *durkasted* for it at the dry rate of the ayacut under it. The plaintiff offered to take it, and was granted it by the Collector in 1853, ever since which it has been his property. At the time plaintiff received it, there was a channel which fed it; but defendants cut it on the 1st October 1860, in order to force him to

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give up the ayacut under the tank, so that defendants might get possession of it themselves. On hearing what had been done, plaintiff complained to the local Sub-Magistrate, when an inquiry was made, and defendants admitted that they had breached the bund of the channel to preserve their lands in the vicinity from being inundated; notwithstanding this inquiry, and the admission of the defendants, plaintiff got no redress, and, owing to the breach in the bund, the water which ought to feed his tank passed into the river Mudigondi, and, plaintiff's tank not receiving its usual supply of water, he incurred a serious loss. The defendants pleaded that plaintiff's claim for loss of produce from Fusly 1270 to 1276 not having been made within a year from the date of the respective losses, was barred under Clause 2, Section 1, Act XIV of 1859. They also contended that plaintiff's complaint to the Sub-Magistrate in 1860 was met by them by petition to the Joint Magistrate; that the Joint Magistrate directed the Ongole Sub-Magistrate to take care that the channel, the subject of plaintiff's complaint, did not damage the *Addunkivari* maniyem by flooding it; that the Sub-Magistrate inspected the spot, and reported that the channel did not feed plaintiff's tank; also that when, in January 1864, plaintiff complained about defendants ploughing up their other channel, the punchayet appointed to investigate the matter came to the conclusion that there never had been channels on the two spots, and that, if a gap in the ridge of earth, which plaintiff designated as the bund of a channel, were filled up and the continuity of the ridge restored, the *Addunkivari* field would be flooded by the accumulation of drainage behind the ridge. The ridge, defendants asserted, was a mere boundary between the *Addunkivari* and the neighbouring maniyems; and, the Tahsildar agreeing in this view, a report was made to the Sub-Collector, who issued an order dismissing plaintiff's complaint. Hence the defendants contended, in point of fact, the two channels spoken of by plaintiff never had any existence, and, as he had never sustained any loss by the acts of defendants, the plaintiff had no ground of action. Mr. Cockerell, the Civil Judge, (before the case came in appeal), on consideration of the evidence, dismissed plaintiff's suit, inasmuch as it was to be expected from the wording of the rules, under which the tank was taken up by the plaintiff, that the tank was dependent on the rainfall; that there being no channels mentioned in the public accounts in connection with the tank tallied with the inference suggested by the rules; that, if there had been regular supply-channels, the fact would have been clear when plaintiff first complained against defendants in 1860, or, at all events, would not have been concealed from the punchayet when that body inquired into the matter in 1864; and it would not have failed to be recognized by the Revenue Settlement Department when the demarcation and settlement of the locality was made. The Civil Judge was further of opinion that the balance of evidence in the suit seemed to show the alleged breached bund on the *Addunkivari* maniyem was not a bund, but a mere boundary ridge separating the *Addunkivari* from the neighbouring maniyem; that the so-called Sircar accounts produced by plaintiff had no mark of authenticity about them; that the motive for the suit was the long standing and admitted animosity between plaintiff and defendants 8 and 9, the persons against whom the suit was directed, though they were not at first included. On all these grounds Mr. Cockerell considered that the plaintiff's tank was a mere natural depression in the face of the country, ridged in by a bund to collect the drainage flowing from the neighbouring land into the depression, and that there were not, and never had been, supplying channels to it. From this decision the plaintiff appealed to the High Court. Rungiah Naidu for appellants; Parthasarathy Iyengar for respondents.

The High Court delivered the following

Judgment:—1*st April* 1870.

We are of opinion that no ground has been shown for interfering with the decree of the Court below. In order to succeed, it was necessary for the plaintiff to establish the existence of well-defined channels and a user of the water flowing through such channels to the tank for a long period of time, and it appears to us that the evidence is insufficient to prove either point. The only oral evidence on which any safe reliance could have been placed are the admissions in the deposition made in a former proceeding by some of the defendants, who are tenants of the adjoining lands, and the father of the first defendant; but the claim in the suit affects the proprietary interest of the ninth and tenth defendants in the adjoining lands, and the admission of their tenants are not evidence against them. As respects the testimony of the witnesses who spoke to the long existence of the channels, we think it is more than outweighed by the evidence of the witnesses who formed the punchayet deputed by the Tahsildar to examine the spot and report as to the existence of the alleged channels and the breach of the embankment. There is every reason to credit their statements, and they distinctly negative the case of the plaintiff. The absence of any mention in the public accounts of the existence of the alleged supply-channels to the south is confirmatory of these statements, and the accounts produced with reference to the other channel cannot certainly be used for the purpose of throwing discredit upon their testimony. Upon the whole, we think the right conclusion has been come to, and the decree appealed from must, therefore, be affirmed with costs.

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SCOTLAND, C. J., AND KINDERSLEY, J.

Carnatic property—Act XXX of 1858—*Kudivarum right.*

A purchased certain land from the Receiver of the property belonging to the late Nawab of the Carnatic at an outright sale; but, on entering into possession and attempting to cultivate, he was opposed by X, Y, and Z, who claimed the kudivarum right of the soil, and contended that all that A was entitled to was to receive the mêlvarum—

HELD *that, under Act XXX of* 1858, *the Receiver had duly sold to A the interest that the Nawab had in the property; but that, from what appeared in evidence, the right and title sold to A was subject to some continuing right of tenancy in the defendant, and that, therefore, A could not eject them.*

R. A. 128 *of* 1869.

Balu Moodelly *v.* Ramasawmy Kothan and eight others.

THIS action was brought for the recovery of certain nunjah land in the village of Thiruthandoni, valued at Rupees 5,090, also for the sum of Rupees 310, alleged to have been spent in the cultivation of these lands together with subsequent mesne profits. It appeared that these lands were formerly the property of His Highness the Nawab of the Carnatic; that, in November 1866, they were sold by Mr. James Richardson, as the agent of the Receiver of the Carnatic property (appointed under Act XXX of 1858), to Ghulam Sherif Sahib for Rupees 5,000; that in December Ghulam Sherif was put into possession of the property by Khan Sahib, the Nawab's agent, and was duly furnished with a sale certificate signed by the Receiver; that the sale certificate comprised lot No. 4 of the Carnatic property, and that all the rights and interests held therein were, by the said certificate, conveyed to Ghulam Sherif. In May 1867 plaintiff purchased this property from Ghulam Sherif Sahib for the same sum under a registered deed of sale, and had entered into possession; he cultivated some portion of the land, but was prevented by the defendants from cultivating the remainder. The defendants complained to the Head Assistant Magistrate, who referred plaintiff to a civil action; hence this suit for the recovery of the lands. Defendants answered that all the interest either the Nawab or Ghulam Sherif had in the lands was that of *mêlvarumdar;* that the defendants were the proprietors of the *kudivarum* right, and had power to sell or transfer the same; that plaintiff's claim was barred by the Statute of Limitations; that they, defendants, were protected by Act XXX of 1858 and by paragraph 5 of the rules of sale published by the Receiver. Mr. Cadell, the Civil Judge of Trichinopoly, was of opinion that the point at issue was simply whether the possession of the lands was sold outright by the Receiver of the Carnatic property, and, again, to the plaintiff; or whether, what was sold by the Receiver, was merely the right to the mêlvarum, or landlord's share, on the lands. Under Section 6, Act XXX of 1858, it was clearly laid down that the Receiver was fully empowered to sell the lands belonging to the estate of the late Nawab, and to execute a conveyance thereof to the purchaser of the property. From the sale notices it appeared clear that what was sold in this case was the entire right to the possession of the lands; this was understood at the time of the sale, and was shown, both by the conveyance executed by the Receiver and also by a letter from the agent of the Receiver, two or three weeks after the sale, in which the agent of the Nawab is requested to put the purchaser in possession of the property sold. Further, it did not appear from the evidence that any objection was made to the sale and disposal of the lands in 1861 or 1866, and, if the defendants had the right of cultivation and occupation of the lands, it was impossible to believe that they would have been silent on both occasions. Again, it was not probable that, if the mêlvarum right were all that was sold, the lands could have fetched the price they did; Mr. Cadell, therefore, thought there was nothing in the documentary evidence to show that the sale of the Thiruthandoni lands was not outright and free from any right of occupancy whatsoever. The oral evidence on the side of the defendants also seemed to Mr. Cadell too utterly vague and unsatisfactory to rebut the evidence on behalf of plaintiff. The defendants appealed to the High Court. Miller for the appellants; Sloan for the respondents.

The High Court delivered the following

Judgment:—23*rd May* 1870.

The question in this case is whether the plaintiff acquired a right, as landlord, to the property in question, and, as such landlord, had a right to eject the defendants.

It is quite clear that, under the sale made by the Receiver under Act XXX of 1858, the plaintiff acquired the right which His Highness the Nawab of the Carnatic had as against these defendants. And the evidence brought forward by the plaintiff to show what that right was merely proves what the defendants admit, that the defendants and their ancestors for many years have been in continued occupation of the land, paying to His Highness' agent half the annual produce as mêlvarum.

From this evidence it appears to us that the only inference that can reasonably be drawn is

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that the right and title sold to the plaintiff was subject to some continuing right of tenancy in the defendants. And there is nothing to show that, at the time of the institution of this suit, the plaintiffs had lawfully determined that tenancy, nor that the tenancy had then expired. It follows that the right to eject the defendants had not been established. Therefore, without saying, upon the evidence now before the Court, that the defendants possess a permanent right of tenancy, we think that the plaintiff has failed to establish his right to dispossess the defendants. The decree of the lower Court must be reversed, and the original suit dismissed with costs throughout.

SCOTLAND, C. J., AND HOLLOWAY, J.

Vendee — Shrotriem — Rights of kudikaniatchidars.

Where the vendee of certain shrotriem land sought to eject the tenants and compel them to remove their houses, treating them as mere tenants-at-will, and it was contended by the latter that the former had no right to do this, as they were the kudikaniatchidars of the village, and all that the vendee was entitled to was the right of his vendor, the former mirassidar, namely, the right to mélvarum—

HELD *that the very deed of sale transferring the shrotriem to plaintiff showed that all that was alienated was a right to the mélvarum, and that it recognized the coincident existence of kudikaniatchidars and tenants, who could not be treated as tenants-at-will.*

S. A. 557 *of* 1869.

Sultan Moideen *alias* Mahomed Rowten *v.* Muttappudaiyan and twenty-eight others.

PLAINTIFF sued, in the Court of the Principal Sudr Ameen of Tanjore, to recover possession, from the defendants, of certain lands in the village of Viraragavapuram, together with the trees standing thereon, in virtue of a bill of sale executed to him by one Pitchu Gurukul and another in 1863 for Rupees 2,000. He alleged that the defendants in possession of the lands were merely tenants-at-will, and sought to compel them to remove certain dwelling-houses erected by them in the village, and to recover value of past produce from them to the value of Rupees 1,719-8-0. The defendants contended that the claim put forward by plaintiff was greatly exaggerated; that they were, by transfer from Rama Taven and others, the *kudikaniatchidars* of the village; that, as such, they had continued many years in undisturbed possession and enjoyment of the lands, merely paying the annual mélvarum to the mirassidar, Pitchu Gurukul. Further, that Pitchu Gurukul had in 1838 executed to them a cowle, which had ever since been in force, by which the *kudikaniatchidars* were bound to pay mélvarum in cash at certain specified rates for nunjah and punjah lands; that they had paid these rates regularly, and without default, for thirty years, and were ready and willing to continue to pay the same to the mélvarumdar, whoever he might be. The late mélvarumdar simply transferred by sale to plaintiff the right he had to the mélvarum, and such sale did not authorize plaintiff summarily to oust them, because they objected to his unjust demand of an enhanced mélvarum to be paid in grain. The plaintiff had taken the place of Pitchu Gurukul, and was only entitled to the same rate of mélvarum. The Principal Sudr Ameen found that the sale deed A was a genuine document; that under it plaintiff was entitled to the same rights and privileges that Pitchu Gurukul had enjoyed; that the question as to what rate of mélvarum could be claimed by plaintiff should be decided by a Revenue Court under Act VIII of 1865 with special reference to Special Appeal 504 of 1861; but the Principal Sudr Ameen made no order as to whether the varum was payable in cash as heretofore, or in grain as claimed by plaintiff, and whether any past produce was due. Against this decree plaintiff appealed to the Civil Court, contending that defendants were merely his tenants-at-will, and he had a right to oust them when he pleased; that their cowle, on which they relied, granted them by Pitchu Gurukul, had been invalidated by the interpolation of the words "in perpetuity" in the final clause; and the Principal Sudr Ameen had erred in placing reliance on what was a forged document. The Civil Judge, Mr. Whiteside, was clearly of opinion that the plaintiff had by his purchase merely acquired the rights formerly held by Pitchu Gurukul; that those rights did not include the power of capriciously ousting defendants, nor of altering their rent according to any fancy of his own; that it was unjust to hold all the twenty-nine defendants responsible for the fraudulent interpolation of the words "*in perpetuity*" which had been done in 1866 by two or three individuals, who had been punished by the Sessions Court for the fraud they had committed; but it was not proved, nor ever alleged, that the present twenty-nine defendants had any cognizance of that fraud. If plaintiff conceived that he was entitled to a different or higher rent than that defendants had hitherto paid, he must follow the course prescribed for him by Act VIII of 1865, and, in the event of their refusing to comply with his demands, it was for him to prove, in the usual manner, before a duly constituted Revenue Court, that his demands were just and fair. From this decision the plaintiff

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appealed to the High Court. Craig for appellant; Miller for respondents.

The High Court delivered the following

Judgment:—20th June 1870.

In this case the special appellant's contention is that he is entitled to eject the defendants as his mere tenants-at-will. Special appellant is the vendee of Pitchu Gurukul, who possessed shrotriem in the village. By the very document executed by Pitchu Gurukul it is manifest that he alienated his right to the mélvarum, and that document recognizes the coincident existence of *kudimirassidars* and tenants. So far from its appearing upon the evidence that the plaintiff is entitled to eject the defendants at his pleasure, it rather appears that all which Pitchu Gurukul reserved to himself was the portion of the mélvarum apportioned upon particular lands to be paid according to the agreement by the defendants. On the findings in this case and on the construction of the document, there exists no reason whatever for finding the plaintiff's right to eject.

This special appeal will, therefore, be dismissed with costs.

HIGH COURT—CALCUTTA.

Couch, Sir R., *Kt.*, C. J., and Kemp, J.

Mullick Kurim Baksh (defendant) *v.* Harrihar Mandar and another (plaintiffs).*

User, right of—Enjoyment, period of, sufficient to create a right of user.

There is no rule of law that a certain period of enjoyment is required to establish the right of user.

This was a suit for the declaration of right to the use of the water of a certain *daur*, or watercourse, for irrigating the plaintiffs' land, and for the removal of an obstruction put upon it by the defendant. The defendant stated that he had not obstructed the watercourse, and that the plaintiffs had no right to the water for the purpose of irrigating their land.

The Munsiff held that the plaintiffs had a right to irrigate their land from the watercourse in dispute, and that the defendant had interfered with the same by having placed a bund over the course. He accordingly passed a decree in favour of the plaintiffs, with a declaration that the parties, plaintiffs and defendant, should make an alternate use of the water of the channel.

On appeal the Subordinate Judge confirmed the judgment of the Munsiff, holding that the evidence in the case proved that for a long time the lands of the plaintiffs had been irrigated with the water of the channel in dispute, but declared that the word "alternate" in the decree of the Munsiff meant that the defendant should use the water, and then, after him, the plaintiffs.

The defendant appealed to the High Court.

Mr. *Gregory* (Munshi *Mahomed Yousaf* with him) for the appellant.

Baboo *Ramesh Chandra Mitter* for the respondent.

The judgment of the Court was delivered by

Couch, C. J.—The Court has found in this case that there had been an enjoyment for a long time, and, consequently, that the plaintiff had established his right to the use of the water. Now, I think we must understand the expression "for a long time" as such a length of time as satisfied the Court that there was a right. No precise period of enjoyment can be said to be required in order to prove the existence of a right of this kind; it is a matter for the Court to determine whether the use has been for such a length of time as to satisfy it that there is a right to it. The cases, as far as I am aware on this side of India, do not go beyond that. The question whether a Judge is bound, upon proof of a certain period of user, to find that there is a right, is a different one from that of whether a Judge who has found a right was justified in doing so. There seems to be no rule of law which says that a certain period of enjoyment is required to establish the right, and, therefore, in this case, as the lower Court has found that there has been a use for a very long time, there is no objection to the finding in point of law. With regard to the other question, the plaintiff alleged in his plaint that he had been obstructed in his enjoyment of his right to the water by the erection of a bund. The lower Courts have found that the right, which the parties had, was that the defendant could make use of the water, and that, after that, the plaintiff would have the right to use it. That is the view which the lower Appellate Court took of the decree of the Munsiff. It may be that it will, on some occasions, be difficult to carry out this decree, and that at times disputes may arise between the parties as to whether the defendant has not done more than exercise the right to which he is so entitled, but that is a difficulty which is inherent in the case, and the nature of the rights possessed by the parties. If at any time the defendant makes use of the water to a greater extent than he has a right to do, and deprives the plaintiff of what he is really entitled to, the question will have to be tried in another suit. It is to be hoped, however, that a right having now been declared, the parties will exercise it in such a way as not to cause any further litigation. The only question which remains to be determined is whether it is proper to allow the decree of the Munsiff to stand with the construction which has been put upon it in the judgment of the Subordinate Judge. The Subordinate Judge says, "I dismiss the appeal, and I uphold the decision of the Munsiff as construed by me."

It would be better that he should alter the Munsiff's decree according to what he says is the proper construction of it, so as to make the right declared more defined and precise; but the parties may make an application to him to amend his decree, and to word it so that it may be in accordance with what he holds to be the proper construction of the lower Court's decree. It is not a matter

* Special Appeal, No. 2,806, of 1869, from a decree of the Officiating Subordinate Judge of Bhaugulpore, dated the 18th June 1869, affirming a decree of the Munsiff of that district, dated the 3rd March 1869.

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for which a special appeal was necessary, and, therefore, this appeal must be dismissed with costs. —*6th May* 1870.—*Bengal Law Reports, Vol. V, Part XXV.*

BAYLEY AND MARKBY, J. J.

Sri Chand (defendant) *v.* Nim Chand Sahu (plaintiff.)*

Co-proprietor—Injunction—Injury.

The defendant was in possession of land under a potta granted by the ijaradars of the proprietors, and thereon commenced to build a house and plant a garden. The plaintiff, who had bought the right, title, and interest of one of the proprietors, sued to restrain him. He did not allege any injury.

HELD *that such suit would not lie.*

THIS was a suit for the demolition of the walls of a house and for restraining the defendant from planting the garden and constructing the new house, which he was then building, on a parcel of land in Mauza Rostompore Shahpore, on the ground that the plaintiff had purchased the right, title, and interest of one of the proprietors, and that the defendant had been forcibly planting a garden and erecting a building on the land belonging to the taluk.

The defence was that the defendant had obtained a potta from the ijaradars of the proprietors who had power to grant such pottas, and that the purchase of the plaintiff of a fractional share could not affect his right.

The Munsiff held that the potta was proved; that the ijaradar had power to grant such pottas; that, as the plaintiff was the holder of a small portion in a joint and undivided mauza, he had no right to advance his claim regarding the whole plot of land in dispute; that it would be a great hardship to pass any order regarding the whole house and garden in a suit instituted by a party who was owner of a small fractional share. He accordingly dismissed the plaintiff's suit.

On appeal the Subordinate Judge found that the potta alleged to have been granted by the ijaradar had not been proved; that the ijaradar had no power to grant a potta in perpetuity; and that the defendant had been planting a garden and erecting a building or house upon land over which he had no right. He accordingly passed a decree in favour of the plaintiff for possession of the land by destroying the wall, house, and garden of the defendant.

The defendant appealed to the High Court.

Mr. *R. T. Allan* (with him Baboos *Mahesh Chandra Chowdhry, Gopal Chandra Mookerjee,* and *Narsing Chandra Mitter*) for appellant.

Mr. *C. Gregory* (with him Baboo *Hem Chandra Banerjee*) for respondent.

MARKBY, J.—It seems to me that, during the whole argument in this appeal, the pleader for the respondent has persistently avoided the point upon which the Court long intimated to him that the decision of the case turns.

Upon many points involved in this case it is unnecessary to pass any opinion whatever. The Munsiff in the first Court held that this suit could not be maintained by the plaintiff. It was a suit brought in substance to stop the defendant from enjoying a property of which he was in possession, by preparing a house, and forming a mango garden upon it, and to have the building of the house stopped, and the wall and trees removed. The defendant's right to possession is not disputed, and it is alleged that he derived his title from certain ticcadars, who again derived their title from the co-sharers of the plaintiff.

The first Court, therefore, lays down, as a principle, that one of several co-sharers cannot, without the consent of the other co-sharers, come in and interfere with the enjoyment of the property by the defendant, who holds under a title derived from all. This view of the case is perfectly in accordance with a decision of Peacock, C. J., and Glover, J., in *Lala Biswambhar Lal* v. *Rajaram.** That case, it is true, arose as between two co-proprietors who were themselves in enjoyment of the property; but it seems to me that on principle the same rule applies where one of several proprietors is seeking to control the enjoyment of the property by the common tenant of all. The mode of dealing with the land as between co-proprietors is really what was in question in both the cases. The only point omitted by the Munsiff is that he does not say in terms whether the defendant was doing any injury to the land, but no injury was ever alleged by the plaintiff, and I would observe that there could be no injury, and, therefore, this case appears to me to be exactly similar to the decision quoted above, in which I fully concur.

I would add that in the case of *Nabin Chandra Mitter* v. *Mahes Chandra Mitter,*† decided almost at the same time, I expressed an opinion that, were the question whether there is any injury done or not, the same principle would apply. It is not necessary in this case to decide that point; but, as that case has been referred to, I have only to say that I still maintain the opinion that I therein expressed.

The judgment of the lower Appellate Court is reversed, and the plaintiff's suit dismissed with costs.

BAYLEY, J.—I think that the case of *Lala Biswambhar Lal* v. *Rajaram,** decided by Peacock, C. J., and Glover, J., should govern this case, the only difference being that the co-proprietors in that case and the representatives of the co-proprietors in this were the parties interested. In other respects there is no difference. The suit alleges no injury, asks for the relief of no injury, and, in fact, it is a suit in which one of several co-sharers, without the consent of the others, asks to have certain trees uprooted, and walls removed from the common land.

I agree in dismissing the plaintiff's suit and reversing the judgment of the lower Appellate Court, with costs of this Court and of the lower Appellate Court.—*11th April* 1870.—*Idem.*

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* Special Appeal, No. 1,983, of 1869, from a decree of the Subordinate Judge of Patna, dated the 31st July 1869, reversing a decree of the Munsiff of that district, dated the 30th January 1869.

* 3 B. L. R., App., 67. † 3 B. L. R., App., 111.

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Case.]

Disputed boundary—Action for recovery of land —Mesne profits—Execution of part of decree —Costs.

In a question of disputed boundaries, where A claimed the recovery of certain land from B, the Privy Council had declared A entitled to two villages and all other land which might be ascertained, on inquiry by the High Court, to be within his boundary. Instead of awaiting the result of this inquiry, A applied for execution of the first part of the decree, namely, possession of the two villages, and the Court proceeded to execute, but refused mesne profits, as the Privy Council had made no mention of mesne profits—

Held *that, as the first part of the decree, as regards possession, had been executed, everything connected with possession should have been executed at the same time; that the right to mesne profits is consequential on the declaration of possession; but that, as the appellant had applied for execution piecemeal and the Court was in error, the appeal was to be dismissed without costs.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal between Rajah Leelanund Singh and Maharajah Lukhmissar Singh Bahadoor, from the High Court of Judicature at Fort William in Bengal, delivered 15th July 1870.

Present:

Lord Cairns.
Sir James W. Colvile.
Sir Joseph Napier.

Sir Lawrence Peel.

The appellant in this case originally sued to recover from the respondent certain villages and lands, alleging that, on a true adjustment of the boundaries, they belonged to the Nizamut Mehals, and not to Havailee. He claimed also mesne profits. The suit was dismissed by the Court of first instance, and that dismissal was confirmed by the Sudr Dewanny Udalut.

Their lordships, on whose recommendation the order in question was made, thought that this dismissal was wrong, and in an ordinary case they would have made the final decree which the Appellate Court in India ought to have made. Not having materials for doing this, they suggested the order in question, which declared the appellant absolutely entitled to the villages of Goremahee and Goruckpore, and to all the rest of the land in dispute which was not comprised in the settlement of Havailee. By declarations it limited Havailee to 123,207 beegahs, including 129 beegahs and 19 biswas, part of Beadon settlement, and so much of the land in dispute as belonged to, or was attributable to, the Bunker and Boondee Mehals. It then directed the High Court of Calcutta to make the inquiry necessary to understand what this last-mentioned land was, and to proceed in the suit as upon the result of such inquiry might seem just,—dealing with the whole question of costs, including the taxed costs of the appeal.

Now, in this state of things, their lordships are of opinion that the appellant might well have waited the result of those inquiries and accounts before applying to the High Court in Calcutta for the execution of the earlier part of the decree with reference to those villages to which he was declared entitled; and their lordships also are of opinion that the High Court at Calcutta might well have declined, if they had been so minded, to execute the earlier part of the decree until they had completed the whole of the inquiries and accounts. However, the appellants did apply to the Court for the execution of the part of the decree which related to the two villages of Goremahee and Goruckpore, to which his title had been declared, and the single judge of the High Court, on whom appears to have devolved the duty of answering the application, was willing to execute, and proceeded to execute, the decree so far as regards possession of these two villages. He stated his opinion to be that, with regard to mesne profits, inasmuch as the order of Her Majesty in Council had not specifically mentioned anything about mesne profits, it would not be proper for the Court in India, in executing a decree, to make any order with regard to the mesne profits.

That order standing would, of course, be an impediment hereafter, even after the inquiries directed by the other part of the decree were completed, in the way of any application by the appellant on the subject of mesne profits from those two villages; and, inasmuch as their lordships are of opinion that, had the first part of the decree stood alone, it would have been one of the consequential directions proper to be given to ascertain the amount of mesne profits at the time that possession of the villages was given, they think that, inasmuch as one part of the decree, namely, that with regard to possession, has been executed by the High Court, everything connected with that possession should be executed at the same time.

Their lordships are of opinion that the right to mesne profits is consequential on the declaration in the decree and upon possession.

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They, therefore, think that the High Court should proceed to ascertain, either itself or by an issue properly framed, to be answered by the local Court, what the amount due to the appellant for mesne profits upon these two villages is. They will, therefore, humbly recommend to Her Majesty that an order should be made to that effect; but, inasmuch as the difficulty has arisen, partly by the application of the appellant to execute the decree piecemeal, and partly by the erroneous apprehension which the Judge appears to have entertained of the effect of the decree of their lordships, think it a case in which there ought to be no costs of the appeal.

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

SCOTT AND GREENWAY, J. J.

Inam lands in zemindaries—Kattoobady—Payment for more than twelve years.

Where a Zemindar sued certain inamdars for kattoobady, alleging that such tax formed part of the income on which he was assessed—

HELD *that the inamdars could not prove that their lands were lakhiraj; that, even if they could prove that their lands were originally lakhiraj, they themselves were not the original grantees, and had meanwhile paid kattoobady between* 1802 *and* 1817; *that it was probable, therefore, that the tenure had been altered on the death of the original grantees; that the Zemindar had a perfect right to collect such taxes as kattoobady, as they invariably formed part of the resources of the zamin on which the kist payable to Government was assessed; but that the Zemindars had no right to change the amount of the quit-rents payable by their tenants.*

No. 16 *of* 1817.

THE late Zemindar of Bezoara sued Khajah Shumsoodeen and the late Munjool Meea, in the Zillah Court of Masulipatam, for the recovery of the estimated value of kattoobady and other dues, payable from Fusly 1217 to Fusly 1220, for certain lands held by them in the villages of Puttamutta and Goonadulla, situated in his zemindary, together with a like sum for damages, on account of their resisting attachment, according to Section 17, Regulation XXVIII of 1802, making a total of Rupees 3,939-12-0.

The Zillah Judge dismissed the suit with costs, as did also the Provincial Court for the Northern Division.

Pending the appeal in the Provincial Court, the original plaintiff died; and, an application having been made to the Court of Sudr Udalut on behalf of his heir, Rajah C. Vencatarama Gopal Jugganadha Rao, for the admission of a special appeal from the decision of the Provincial Court, the Court of Sudr Udalut admitted the special appeal solicited, on the ground that the suit involved questions of a general and important nature, the erroneous decision of which might be of serious ill.

In the pleadings filed in the Zillah Court, on the part of the original plaintiff, it was averred that the inam lands held by the defendants, consisting altogether of twenty-two cutties, were subject to the payment of a tax called "kattoobady," at the rate of four tooms per pootty on an estimate of the produce; that the tax was paid long before, as well as subsequent to, the formation of the permanent settlement; and that the said tax formed part of the resources upon which the permanent assessment of his zemindary was made. The defendants, on the other hand, averred that, according to the sunnuds in their possession, the lands held by them were lakhiraj, or exempt from the payment of revenue; that the Government never established or received from them any tax; and that the share of the produce which the Zemindar had collected from them was taken by force.

The Zillah Judge was of opinion that the plaintiff had failed to prove that the inams held by the defendants were kattoobady inams; that what had been taken from the defendants, on account of their inams, had been taken by the strong hand of power, contrary to the intention of the authorities by whom the inams were originally granted to the family of the defendants; and that, if the inams were kattoobady inams, the plaintiff had no right under the Regulations to the kattoobady, inasmuch as Section 4, Regulation XXV of 1802, declares in the most express terms that the permanent assessment of the land revenue shall be exclusive of lakhiraj land and all other lands paying only favourable quit-rent. The Zillah Judge considered it to be fully proved by documents, which he enumerated, that the defendants had been made to pay something for their inams, both before and since the permanent assessment of the land revenue; and he also deemed it to be satisfactorily proved by documents, also enumerated, that the inams were granted as kharij-jumma or exempt from the payment of tribute, and were so considered for a number of years.

According to the decree of the Provincial Court the appeal was dismissed exclusively on the following grounds, namely, because the appellant had not filed on record, either in the Zillah or in the Provincial Court, any evidence to

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establish his right to the kattoobady claimed, and because he had not produced even a single document or witness to prove that it had been customary to receive the kattoobady prior to the formation of the permanent settlement, or for a period of twelve years prescribed by Section 4, Regulation XXXI of 1802.

The exhibits filed by the plaintiff in this case went to show that, whatever might be the tenure on which the lands held by the defendants were originally granted, a kattoobady was paid for them from the Fusly year 1202 to the Fusly year 1217, that is, for a period of fifteen years prior to the date on which the cause of action arose. The defendants, indeed, objected to the admission of the village accounts as evidence, on the ground that the Zemindar, by his influence over the Curnums, might cause such accounts to be fabricated so as to suit his purpose; but they did not produce, nor attempt to produce, any evidence to invalidate those accounts, the general correctness of which was, in fact, partly corroborated by their own admission, that the Zemindar had been in the habit of making collections from them on account of their lands. These collections, they averred, were made by force; but they did not attempt to support the averment by evidence. It was not to be presumed that they would have quietly submitted for so long a series of years to unauthorized exactions, and there was no evidence to show that they offered any resistance until Fusly 1217. Two exhibits, bearing the signature of one of the defendants, Khajah Shumsoodeen, the execution of which was not denied, afforded conclusive evidence that a payment under the denomination of "roosoom" or "kattoobady" was made for the land, in the village of Puttamutta, on account of the Fusly years 1201 and 1216.

In regard to the exhibits filed by the defendants, the Court observed that they did not afford proof that the lands in question were originally granted free of assessment. They consisted of doombalas for the produce, and of orders addressed to public officers, in which allusion only, and that in vague and general terms, was made to the contents of separate or former sunnuds. Those sunnuds were not produced, and no cause was assigned for their non-production. The exhibits filed by the defendants proved nothing more than that the lands in question were held for a series of years on the tenure on which they were originally granted; but the nature and condition of that tenure could be ascertained only by reference to the original grants which, as stated before, were not produced. To show, indeed, that no sort of reliance could be placed on instruments of the nature of those produced by the defendants, it was only necessary to refer to the doombala No. 49 and several of the succeeding doombalas, wherein the land in the village of Puttamutta was mentioned as the inam of Shah Tuhoor Ollah; whereas, it appeared from the order to the public officers, No. 48, that Shah Tuhoor Ollah was then dead, and that the land in question was granted for the support of his tukeea, while some of the other doombalas represented it as granted for the mudud maash or personal support of his son, Khajah Noo-rood-deen.

It was clear, therefore, that the defendant had altogether failed to prove that the lands held by them were originally granted free from assessment; and, even if that plea had been established, it would not be sufficient to make good their title to the exemption. The defendants were not the original grantees; and, in the exhibits filed by them, there was nothing to show that the grants were hereditary. The land in the village of Goonadulla, consisting of six cutties, appeared to have been granted to Shah Tuhoor Ollah Durvish, and that in the village of Puttamutta, consisting of fifteen cutties, to his son Khajah Noor-ood-deen. Both grants, as far as the nature of them could be ascertained from the exhibits filed, appeared to be mere personal grants; and, as it was clearly established that, for a period of fifteen years at least before the cause of the present action arose, the lands granted were subject to an assessment under the denomination either of kattoobady or of roosoom which, as far as was shown in the record, was paid without resistance, the obvious presumption was that, if the lands were originally held lakhiraj, in the strict meaning of the term, the nature of the tenure was modified after the death of the original grantees.

The Court, therefore, after an attentive consideration of this part of the case, were decidedly of opinion that the defendants had not established their title to the exemption which they claimed; and it was, moreover, to be observed, with reference to the provisions of Section 4, Regulation XXXI of 1802, that their title to such exemption, if they ever possessed a good one, would now avail them nothing, inasmuch as it was clearly proved that they had continued to pay revenue, under the denomination either of roosoom or kattoobady, for a period of upwards of twelve years before they attempted to resist the payment.

The next point for consideration was whether the Zemindar was entitled to collect quit-rent payable by the defendants for their lands.

The right of a Zemindar to collect favourable quit-rents of this description appeared to the Court to be unquestionable. It was within their knowledge, and ought to have been within the knowledge of the lower Courts, that this item of revenue was included in the assets upon which the permanent assessment of every zemindary was formed. The fourth clause of the sunnud-i-milkeut-i-istimrar was indeed decisive on this point; and it declared, not that these

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quit-rents were *not receivable*, but that they were *unchangeable* by the Zemindar. It would have been obviously absurd and inconsistent to declare this item of revenue to be included in the assets of the zemindary, and yet to debar the Zemindar from the right to collect it; neither was this clause of the permanent sunnud any wise incompatible with the provisions of Section 4, Regulation XXV of 1802, which the Zillah Judge quoted as conclusive against the plaintiff's claim. That section provides that the permanent assessment shall be made exclusively of certain sources of revenue, among which are enumerated "lands paying only favourable quit-rents." The exclusion refers not to the *quit-rents* but to the *lands*, which might otherwise have been considered assessable with the full jumma at the discretion of the Zemindar; that discretion the Government reserved to itself, and the exercise of it is subjected to the rules contained in Regulation XXXI of 1802. Upon the grounds above stated the Court adjudged that the original plaintiff had established his rights to collect a quit-rent from the defendants, and the only remaining point for consideration was the amount of quit-rent due for the lands on account of the years 1217, 1218, 1219, and 1220. The plaint set out by stating that the kattoobady, at the rate of four tooms per pootty on an estimate of the produce, was payable for the lands; but, in the detailed statement of the amount claimed, were inserted other items of which, as the Zillah Judge correctly observed, no explanation was given. These items consisted of what was called the ambarum share of the produce of savarum land in both villages; of a tax on toorich trees; and of dues payable for inams granted to Govindarauzwar, Conarywar, Munchaguuty Comarauze, and Conary Boochiah. Neither in the petition of appeal to the Provincial Court nor in that to the Sudr Udalut was any attempt made to explain these items of claim; and as in the village accounts filed by the plaintiff nothing appeared, as far as the Court could see, to warrant them, they must be rejected, as must also the claim to damages for resistance, to distraint of which no proof appeared on the record.

That the quit-rent payable by the defendants was at the rate of four tooms per pootty on the produce, the Court considered to be sufficiently established by the village accounts filed by the plaintiff. The defendants in their answer objected to the estimate of the produce for the years in question as excessive; but, on comparing that estimate with the statement contained in the village accounts, the Court observed that its average was very little higher than the average of the produce for the four years preceding, namely, Fuslies 1213, 1214, 1215, and 1216. At the present stage of the proceedings, any benefit that could result to either party from having the exact amount of the produce in the year in question ascertained by evidence would be counterbalanced by the delay in the final decision of the suit already too long protracted; and as the most equitable method of settling this point, under all the circumstances of the case, the Court adjudged that the quit-rent payable to the plaintiff for the Fusly years 1217, 1218, 1219, and 1220, should be calculated on the average of the produce for the four preceding years, at the rate of four tooms per pootty, and at the commutation price of Pagodas $5\frac{5}{8}$ per pootty for the village of Puttamutta and Pagodas $5\frac{3}{4}$ for the village of Goonadulla, those being the respective averages of the prices specified in the petition of plaint, to which the defendants offered no objection.

With his petition praying the admission of a special appeal, the appellant presented sundry documents, which, as they were not produced in the lower Courts, and no cause was assigned for their non-production, were inadmissible and ought not to have been received. The Court directed that they be returned to the appellant, and, with regard to that part of the petition in which it was stated that the Zemindar had been cast in several other suits precisely of the same kind as the present, and, in the event of the judgment of this Court being in his favour, it was his intention to apply for the admission of special appeals from the decrees in the other suit referred to, the Court observed that the regular course for the appellant to pursue was to apply to the Court which passed such decisions for a review of judgment under the provisions of Section 6, Regulation XV of 1816.

On the grounds above stated the Court set aside the decrees passed by the lower Courts in this case.—*I. Select Decrees, p.* 179.

SCOTT AND GREENWAY, J. J.

Mirasdars — Sub-renters — Coopatum —Kudivarum.

Where certain mirasdars sued the sub-renters of a village for the recovery of coopatum and kudivarum alleged to be due to them—

HELD *that the mirasdars' claims to coopatum and kudivarum did not rest on identical grounds; that they were entitled to kudivarum only when mirasdars themselves cultivated the land, or, at least, had caused it to be cultivated on their own behalf; but that, as to coopatum, that was their right as lords of the soil, and was only to be determined according to the provisions of Hindoo law.*

No. 3 *of* 1819.

PEDDOO NAICKEN CHENGLEROYA MOODELLY, Soorapah Moodelly, and Mamapah Moodelly,

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mirasdars of the village of Perumbaukum, instituted this suit, in the Zillah Court of Chingleput, to recover from Teroocovilloor Soobaroyer, the renter, Ramasawmy Iyen, his brother and goomastah, and Valapah Moodelly, the sub-renter of the village, the sum of Pagodas 110, the balance (after deducting a payment made of Pagodas 13½) of the estimated amount of allowances called coopatum, on account of samba grain, from the year 1806-7 to 1813-14, and Pagodas 45, the estimated kudivarum or cultivator's share of a tope, from the year Crodauah (1805-6) to Streemooka (1813-14); total amount claimed, Pagodas 155.

The Zillah Court adjudged to the plaintiffs the sum of Pagodas 232-25-6 with costs.

From this decision one of the defendants, Ramasawmy Iyen, appealed to the Provincial Court for the Centre Division, and that Court reversed the decree of the Zillah Court, and adjudged the respondents, Peddoo Naicken and others, to pay all costs.

On the application of Peddoo Naickèn, the Court of Sudr Udalut resolved to admit a special appeal from the decision of the Provincial Court so far as it regarded the claim for the allowance called coopatum.

In considering the application for the admission of a special appeal in this case, the Court were unable to acquiesce in the broad and sweeping principles upon which the decree of the Provincial Court appeared to be founded. In declaring that "whether the renter endeavoured to oppress them (the mirasdars) or not, their abandoning their lands was a step useless to themselves and injurious to the renter and the public," and that "such conduct in mirasdars has ever been considered as deserving of the forfeiture of their right of cultivation," the decree went to establish maxims which, taken in a general point of view, seemed to the Court to be inconsistent with law and repugnant to the common principles of equity, and the rejection on such grounds of the plaintiff's claim to the grain allowance called coopatum was an error which the Court considered it necessary to correct.

The determination of the case appeared to the Court to involve an abstract question of the greatest importance, both as it affected the rights of the subject and the interests of the Government, namely, whether the privileges of a mirasdar are liable to become forfeited by his omission or refusal to cultivate his mirassi lands himself or to provide for their cultivation by others. The decision of this question would require a very comprehensive reference to the provisions of the Hindoo law in regard to vested rights and their liability to forfeiture. It would be necessary to ascertain whether, according to the particular privileges arising out of the possession of mirassi property in land is dependent upon the performance of certain fixed and definite conditions; and whether under any, and what, circumstances the omission or refusal to perform these conditions might be so far justified as to save the right from forfeiture.

The fundamental error of the Provincial Court's decision appeared to have arisen from their confounding the right to receive the kudivarum or cultivator's share with the right to the peculiar privileges which are incidental to, and evidence of, mirassi property in lands. The kudivarum is, no doubt, receivable by the persons who cultivate the lands; and, if the mirasdar has omitted or refused to undertake its culture, he can have no right or title to the share of the produce allowed as a remuneration to those who actually cultivate it. But it does not follow that the mirasdar, by forfeiting his right to kudivarum, forfeits also his right to the peculiar privileges vested in him as the proprietor of the land. To entitle himself to the first, he must bestow upon the land the benefits of his stock and labour; and, if he withholds these, he cannot claim the advantages resulting from the employment of stock and labour by others. But his right to coopatum and other privileges of the similar nature rests upon grounds altogether different. It rests in him as mirassi proprietor of the land; and, whether his omission or refusal to cultivate will operate to divest him of it, while the land is in the temporary occupancy of others, is a separate and distinct question which, as stated before, must be decided by a reference to the provisions of the Hindoo law and the immemorial customs and usages of the country.

On an attentive consideration of the record, however, it appeared to the Court that the determination of this important question was not necessary to a decision on the claim of Peddoo Naicken and the other original plaintiffs. In the first place, their claim was for the whole coopatum of the village, whereas it appeared in evidence that there were other mirasdars who must be entitled equally with the plaintiffs to a share of the mirassi privileges in proportion to the share which they hold in the village. As they had not joined in the action, it must be assumed that they had received the shares to which they were respectively entitled. In the next place, there was no sufficient evidence that Ramasawmy Iyen, against whom the action was more particularly directed, appropriated to himself the allowance which is the subject of the action. There was, on the contrary, the evidence of Narrain Naick, a relation of Peddoo Naicken, that a part of it at least was received by Valapah Moodelly. This man was one of the original defendants. In the petition of the plaintiffs he was designated as "mortgagee of ground" and the sub-renter of the village, and, in the answer filed by two of the respondents in the Provincial Court, they admitted that they,

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with others, mortgaged part of their lands to Valapah Moodelly; but they averred that he received nothing on account of coopatum. They abandoned, therefore, their original claim against him, and they failed to substantiate their claim against the other surviving defendant, Ramasawmy Iyen.

The Court, therefore, although they did not concur in the grounds of the Provincial Court's decision, affirmed their reversal of the decrees passed in this case by the Zillah Judge, and they accordingly adjudged that the appeal be dismissed and that the appellant, Peddoo Naicken, pay all costs.—*Idem, p.* 227.

OFFICIAL PAPERS.

Discount on adhesive Court Fees' Stamps.

Proceedings of the Madras Government, Revenue Department, 29th July 1870.

Read the following Proceedings of the Board of Revenue, dated 17th June 1870:—

Read the following letter from the Acting Superintendent of Stamps, to the Acting Secretary to the Board of Revenue, dated Madras, 10th June 1870, No. 1613.

I beg to submit, for the consideration of the Board, the advisableness of reducing the rate of discount allowed on the sale of adhesive Court Fees' stamps.

2. I was informed that adhesive stamps for values besides those for the fractional parts of a rupee were very much required. As it is intended before long to have adhesive stamps for all values under 100 Rupees, I have, in consequence of the information received, converted, and shall continue to convert, into Court Fees' stamps, the foreign bill stamps not in demand for 1, 1½, 2, 3, 4, 6, 8, 12, 18, and 24 Rupees. The demand for these adhesive stamps is very considerable in the High Court, and probably in the Mofussil Courts also, preference being given to them because they can be kept within a small compass, and need not be used until the very moment they are required. The liberal rate of discount allowed* on the adhesive stamps in question in common with all other adhesive stamps may, therefore, it appears to me, well be reduced now. The stamp vendor in the Sea Custom Office has informed me that he is only allowed discount at three per cent on adhesive Court Fees' stamps. As there is a delay in publishing the rules for the sale of stamps, I beg to suggest that the last-mentioned rate of discount be laid† down by a circular from the Board of Revenue in all districts without delay.

Board's Procs., 8th April 1870, and 13th April 1870, No. 2560, paras. 8 to 11.

* Board's Procs., 8th March 1869, No. 1558.

† *Vide* Board's Proceedings, 13th April 1870, No. 2506, paragraphs 13 and 15, and Rule VI. in Draft Rules proposed in letter to Govt., 7th February 1870, No. 883.

In their Proceedings of the 13th April 1870, No. 2506, the Board suggested that stamps under the Court Fees' Act must be made to fall under Class 2 of Rule I. of the Draft Rules framed under Section 48 of the General Stamp Act, 1869, if those rules were made applicable to them.

2. Under Rules VII. and VIII., the discount allowed to vendors on stamps of Class 2 is to be three per cent to vendors licensed at places where stamps are sold by Government, and five per cent to vendors licensed at other places, provided that no discount is given on any stamp exceeding Rupees 50 in value, or when the stamps purchased at one time are worth less than Rs. 25.*

* The present practice in this Presidency.

3. As it is still uncertain when any rules for the sale of stamps under the Court Fees' Act will be adopted, and the revenue is suffering in the meantime, the Board request Government to allow them to issue a notification to the effect that, pending further orders, the discount allowed on Court Fees' stamps will be three per cent, provided that no discount will be given on any stamp exceeding Rupees 100 in value, or when the stamps purchased at one time are worth less than Rupees 25.

Order thereon, 29th July 1870, No. 1125.

Under the circumstances represented in the foregoing Proceedings, the Right Honourable the Governor in Council is pleased to authorize the Board of Revenue to issue a notification in the terms proposed in paragraph 3 of their Proceedings.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

Commission on sales of Court Fees' Stamps.

Proceedings of the Madras Government, Revenue Department, 13th September 1870.

Read the following Proceedings of the Board of Revenue, dated 4th July 1870, No. 4690:—

Read again Board's Proceedings, dated 15th June 1870, No. 4178.

Read also the following letter from the Acting Superintendent of Stamps, Madras, to the Acting Secretary to the Board of Revenue, dated 17th June 1870, No. 1681.

In reply to the Board's Proceedings of the 15th instant, I beg to state that I think the suggestion of the Collector of Malabar should be adopted in his district, and extended to all other districts where it may be considered necessary by the Collectors.

2. No. IX. of the Rules for the sale of stamps, proposed by the Board in their letter to Government, 7th February last, No. 883, provides for advances of stamps of Class 2 being made to licensed vendors.

3. I would suggest that Collectors be consulted as to the extent of the advance of stamps to be made in each district to the vendors, in order that a fixed scale may be established, subject to alteration with the sanction of the Board, and that the opportunity be taken to ascertain in each district

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whether additional vendors are not required. The issue of the advances of stamps need not be deferred until the scale above proposed is fixed.

Under the new Stamp Acts the number of different denominations of stamps is so numerous that vendors cannot afford to purchase a stock containing at least one of each denomination at the same time. The Collector of Malabar reports that this causes great inconvenience, and proposes to supply vendors with such stock as may be necessary without payment.

2. Pending the final adoption of Rules for the sale of stamps under each Act, the Board resolve to request Government to permit Collectors to supply vendors with stamps, without payment, at their discretion, having first taken sufficient security. The rate of discount allowed on these stamps will be two per cent, so that vendors will still purchase as much of their stock as they can.

3. Before calling on Collectors for a report with regard to vendors, the Board think it desirable to await further orders as to the persons by whom the sale of stamps under the Court Fees' Act is to be conducted.

Order thereon, 13th September 1870, No. 1458.

The recommendation of the Board to the effect that vendors may be supplied with Court Fee stamps without payment for sale on commission at two per cent is sanctioned as a temporary arrangement. Security should in all cases be taken. The Board will consider and report whether it would not be better and more economical to have salaried vendors at all events at each station of a Court or populous town.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

POWERS OF COLLECTORS UNDER GENERAL STAMP ACT.

Proceedings of the Madras Government, Revenue Department, 21st September 1870.

Read the following Proceedings of the Board of Revenue, dated 25th August 1870:—

Read again Board's Proceedings, dated 18th August 1870, No. 5356.

Read also the following letter from the Registrar-General of Assurances, to the Acting Secretary to the Board of Revenue, dated Madras, 20th July 1870, No. 78.

I have the honour to forward, for the information of the Board of Revenue and for such orders as the Board may consider necessary, the accompanying reference from the Registrar of Tinnevelly, No. 148, of the 13th instant, regarding certain questions arising under Section 23 of the General Stamp Act.

ENCLOSURE No. 1.

From the Registrar of Assurances, Tinnevelly, to the Registrar-General of Assurances, Madras, dated 13th July 1870, No. 148.

Under the provisions of Section 23 of the General Stamp Act XVIII of 1869 the several Sub-Registrars forwarded direct to the Collector, as therein required, all insufficiently stamped instruments which were brought to their offices for registration for the purpose of being disposed of by him under Section 20 or 24 of the said Act.

2. The Collector referred all such cases to me for disposal, and, when I pointed out that I did not think I was competent to dispose of them as I was only his personal assistant and had no original jurisdiction, and that they were disposable by himself as Collector of the district, who, for the purposes of the Act, might be either "a Deputy Commissioner or any officer having jurisdiction equivalent to that of a Collector of a district," (*vide* Clause 9 under Section 3 of the said Act,) he framed Proceedings, under date the 25th February last, delegating to me, under Clause 2, Section 3 of Regulation VII of 1828, all the powers conferred on the Collector or any officer in charge of a division for the purposes of Act XVIII of 1869, and directed me to proceed, under Section 20 or 24, in the cases referred to him by the Sub-Registrars for disposal.

3. As the definition of "Collector" seemed to include the divisional officers of the district who have independent charges and exercise co-ordinate powers with the Collector, I directed the several Sub-Registrars to send in future all cases in which unstamped or insufficiently stamped instruments were produced before them to the divisional officers concerned for disposal instead of to the Collector; but the late Sub-Collector, Mr. Pennington, was of opinion that Regulation VII of 1828 did not include the case of the Stamp law, the administration of which, he goes on to say, seems to have been *intentionally* reserved to the Collector and the Treasury Deputy Collector, and adds that he is "not aware of any *precedent* for a Sub-Collector or other divisional officer disposing of these cases," and for these reasons declined to take up the cases referred to him by the Sub-Registrars in his division.

4. Under these circumstances some authoritative order or ruling seems desirable to guide both myself and the Sub-Registrars in our procedure under the Stamp Act, and the points involved in doubt are—(1), whether the Collector is competent to delegate his power, under the Stamp law, to a subordinate officer of the district under the provisions quoted above of Regulation VII of 1828; (2), whether the administration of the Stamp law is, as put by the Sub-Collector, reserved to the Collector of the district and his Treasury Deputy exclusively; and (3), whether divisional officers are, or are not, included under the definition given of Collector in Clause 9, Section 3 of the Stamp Act.

The Board have no doubt that the intention of the General Stamp Act is that the officer exercising the powers of a Collector shall be the head of the district, and they are further of opinion that it is most undesirable that the Collector should depute those powers to a subordinate. Amongst them is the power of adjudication, which, up to passing of the Act, was reserved to the Board.

2. Under Regulation VII of 1828 a Collector may depute to subordinates any of the powers conferred on him by a subsequent enactment unless "expressly" prohibited in that enactment. The prohibition in the General Stamp Act of 1869

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is implied, but it can scarcely be said that it is expressed.

3. Pending further orders the Board resolve to direct Collectors not to delegate any of their powers under Act XVIII of 1869 to their subordinates.

Ordered that a copy of the above Proceedings be submitted to Government.

Order thereon, 21st September 1870, No. 1480.

The orders of the Board of Revenue are approved.

(True Extract.)
(Signed) H. E. STOKES,
Under-Secretary to Government.

TRANSFER OF GOVERNMENT WELLS IN CHINGLEPUT DISTRICT.

Proceedings of the Madras Government, Revenue Department, 26th August 1870.

Read the following Proceedings of the Board of Revenue, dated 14th July 1870, No. 4877:—

Read the following letters:—

From W. T. BLAIR, Esq., Acting Collector of Madras, to the Acting Secretary to the Board of Revenue, dated Sydapet, 18th May 1870, No. 173.

With reference to the Board's Proceedings of the 23rd April last, No. 2705, I have the honour to state that the Order of Government, dated 17th March 1869, No. 723, sanctioning the reduction of assessment on old well lands in this district, not having been received till the settlement of more than four out of six taluks had been completed, Mr. Fane was unable to carry out the reduction during the settlement of Fusly 1278. Orders were, however, issued to the Tahsildars last year to suspend the collection of the amount remitted by Government.

2. The regular fieldwar reduction of assessment was carried out during the settlement this year, and a statement of the financial effect of the reduction conceded is now under preparation in the several taluks, and will be submitted to the Board at an early date.

From the same officer, dated Sydapet, 21st May 1870, No. 177.

With reference to the Order of Government, dated 17th March 1869, No. 723, communicated in Board's Proceedings of the 20th idem, No. 1929, calling for full information regarding certain wells said to have been constructed and kept in repair at the cost of the State, I have the honour to state that the wells in question are sixteen in number, and are scattered over the district as indicated in the margin.

Sydapet	1
Chingleput ...	2
Madranticum ...	11
Trivellore ...	2

2. The well in the Sydapet Taluk is situated in the old cutcherry compound at Poonamallee. It appears to have been constructed at the same time as the building, and has always been kept in repair at the expense of Government, the land being let out at a fixed rental from year to year. For the last two years the land has not been rented out in consequence of the Commanding Officer having objected, on sanitary grounds, to any cultivation being carried on within the cantonment limits.

3. It appears from a communication received from the Superintending Engineer's office that in 1864 a sum of Rupees 105 was expended in repairing the well and fixing a picottah to it.

4. The wells (two) in the Chingleput Taluk are situated in the villages named in the margin. That at Kadoombady is stated to have been built some thirty years ago by Government at the request of the ryots, and the records of the Taluk office show that a sum of Rupees 169-4-0 was spent in the repair of this well in the years 1855 and 1864.

Kadoombady.
Kalambakam.

5. It is said to have irrigated about thirty cawnies of land under the tank of that village, whenever the supply in the tank fell short; and that, if it is again put in thorough repair, (the cost of which is estimated by the Tahsildar at Rupees 250), it would supply water to a further area of fifteen cawnies.

6. The well at Kalambakam was constructed some forty years ago at the expense of Government. It has no distinct ayacut of its own; but irrigates two cawnies of nunjah land under the tank of that village, besides being useful to the village community for drinking purposes. The records do not show that any expenditure has been incurred on this well by Government. The Tahsildar says that the well requires immediate repair, and estimates the cost thereof at Rupees 55; but I think it may be left to the villagers to execute any repairs that may be necessary.

7. Of the eleven wells in the Madranticum Taluk, eight are situated in Keelamoor. The Tahsildar says that, the Pymash account containing no information whatever as to the origin of these wells, he presumed them to be the property of Government, and accordingly included them under the head of "Government wells."

8. He states, however, that all these wells are completely out of repair and may very well be given up, the land under them, amounting to acres 19-9-6, assessed at Rupees 56-13-4, being transferred to the head "Dry" and assessed at the first class punjah rate of the village. I beg to recommend the adoption of the course proposed by the Tahsildar, more especially as there is no record of any expenditure having been ever incurred by Government in the repair of these wells.

9. Of the remaining three wells, two are in the village of Colyalam and one at Vennamangalam. Those at Colyalam are entered in the Pymash accounts as Government wells, but the records show no trace of any expenditure having been incurred by Government on them. Both the wells are within the high-water line of the tank of the village, and, at the spot where they are situated, water is said to stand to the depth of three yards when the tank is full. The Tahsildar states that the wells are quite useless for purposes of irrigation. I, therefore, recommend that they be abandoned, and the lands under them, acres 7-33-3, assessed at Rupees 44-8-11, transferred to the head of "Punjah" and assessed at the highest punjah rate of the district.

10. As regards the one well at Vennamangalam, the Tahsildar states that there is nothing on record to show whether it is a private or a Government well, or whether any expense has

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ever been incurred by Government in its repair. The Tahsildar further says that it is now out of repair, and that the land under it, namely, acres 0-16-5, assessed at Rupees 1-1-11, has been lying waste for some years.

11. The wells in the Trivellore Taluk are situated in the villages of Agaram and Siyananjery. That at Agaram appears to have been sunk by the shrotriemdar long before the shrotriem had reverted to Government. It seems to have been kept in repair by the ryots themselves. Since the date when the return of private and Government wells was submitted to the Board, this well has been treated as a private well, and the land under acres 5-38-13, assessed at Rupees 29-6-2, transferred to the head of "Punjah" by the Special Deputy Collector, who was deputed to revise the Manavary rates in this district.

12. The well at Siyananjery was constructed by the Zemindar when the village was held under permanent settlement.

13. In the Pymash accounts it is entered as a Government well, though no expenditure seems to have been incurred by Government in keeping the well in repair.

14. The Tahsildar says that it is in good order at present, and the ayacut under it is acres 14-28-9, assessed at Rupees 88-8-0.

15. From the foregoing explanation it will be seen that the only wells that need be maintained in repair at the expense of Government are those situated in Poonamallee, Kadoombady, and Siyananjery.

Submitted to Government with reference to Government Order, dated 17th March 1869, No. 723.

2. In this letter the Acting Collector reports on the condition, etc., of the sixteen wells said to have been constructed at Government expense in the Chingleput District. Of these sixteen wells, it appears that only three are considered worth keeping up at Government expense. One at Kadoombady, in the Chingleput Taluk, requires repairs to the extent of 250 Rupees; but by its means thirty cawnies of land are watered when the tank fails, and it is stated that fifteen additional cawnies may be irrigated from it if it is repaired. A second at Poonamallee was put in repair in 1864; but it is now disused, as the Military authorities object to irrigation in the cantonment.

3. The third at Siyananjery, in Trivellore, is said to be in good order, and to irrigate fourteen cawnies, assessed at 88 Rupees. The remaining wells are either out of use or are kept in order by the villagers, and the Acting Collector considers they may properly be given over to the villagers and the land assessed at the highest *punjah* rates. So far as can be gathered from Mr. Blair's letter, the lands under the wells proposed to be abandoned are about 32 acres in extent, assessed at Rupees 137-8-0; he does not give the assessment which will be due on them when transferred to punjah. The loss, however, will be very trifling in amount, and the Board recommend that the Acting Collector's proposals be sanctioned. They also concur with him in thinking it desirable to retain the remaining three wells under Government control.

Order thereon, 26th August 1870, No. 1325.

The Right Honourable the Governor in Council concurs with the Board of Revenue in considering that thirteen of the sixteen wells referred to in the foregoing papers should be made over to the holders of the lands irrigated by them, the assessment of the lands being fixed at the highest dry rate of the village. The Acting Collector is accordingly authorized to adopt this course, the financial result being incorporated in the report on the general measure which is about to be submitted.

2. The remaining three wells should be included in the Public Works Department's list of Government irrigation works, and measures should be taken for the execution of the necessary repairs.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

SEASON REPORT.

REMARKS ON THE SEASON.

NORTHERN SECTION.—The rainfall was tolerably good in Ganjam, Vizagapatam, Kistna, and Nellore, and in the two former districts was more plentiful than in the preceding month. In Godavery, however, the rainfall was both scanty and partial.

Ganjam.—In Ganjam, *paddy* was still being transplanted. The standing dry crops were in good condition, and *gingelly* was being cut in a few localities. The Chicacole and Ganjam rivers were in fresh, and tanks and channels received supplies of water.

Vizagapatam.—In Vizagapatam, the transplantation of *paddy* and the harvesting of *guntalu*, *gingelly*, *corralu*, and *raggy* were progressing.

Godavery.—Tanks in the Godavery District held inadequate supplies owing to the scanty rainfall, and the further cultivation of wet grains under them was retarded. The standing dry and wet crops also were in an indifferent state from the same cause. Under channels, however, the case was otherwise, and the transplanted *paddy* crops were thriving. A few of the early dry grains were harvested, but the out-turn was not very satisfactory.

Kistna.—The sudden and heavy freshes in the Kistna river swept away several thatched and tiled houses in the Bandur and Repally Taluks, and completely destroyed the standing early crops. The progress made in cultivation, except in regard to *paddy*, was comparatively poor, and the condition of standing crops was far from promising in the Bandur, Sattanapilly, and Vinuconda Taluks.

Nellore.—Ploughing had still not ceased in Nellore. A large number of grains were under cultivation, and the standing crops generally were thriving. *Indigo* and *potti nallavari* were cut in a few taluks.

Prices rose in Ganjam, Vizagapatam, and Godavery. In the other districts the prices of the majority of the grains remained stationary.

Nellore alone was free from cholera. It was in existence in the other districts, and was most virulent in Ganjam, where 121 persons fell victims to it. Fever was, more or less, generally prevalent

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and small-pox was confined to Godavery, Kistna, and Nellore.

Cattle were not free from disease.

Ceded Districts.—The rainfall was general, and, in parts of the Kurnool District, was excessively heavy.

Cuddapah.—Tanks received unequal supplies in Cuddapah. *Paddy, cotton,* and some of the dry grains were cultivated, and preparations for a further cultivation of the same were being made. The standing crops were generally thriving. *Chennangi, paddy, indigo, sajja, korra,* and *cholum* were harvested, and their out-turn was three-fourths of a full yield.

Bellary.—In Bellary, agricultural operations were confined to gathering the special products—*cocoanuts* and *arecanuts*—and the sowing of the usual grains.

Kurnool.—The Irrigation Company's canal in Kurnool breached in several places from the excess of rain, and there is little hope of irrigation by its means for the current season. *Paddy, korra,* and *cotton* were sown, and *indigo* was harvested.

Prices fluctuated in Cuddapah and remained almost stationary in Kurnool, while in Bellary they declined in some instances.

There was no cholera, and the public health of the section was not affected by the existence of fever and small-pox in a few localities.

Cattle suffered slightly from disease in Bellary and Kurnool. A few cases were personally treated by Dr. Thacker in the former district with partial success.

East Centre.—The rainfall in this section was general and somewhat copious.

Chingleput.—In Chingleput, fair progress was made in wet cultivation; dry cultivation, however, was impeded by the intermittent fall of rain. *Indigo, gingelly oil seed, cumboo, kar paddy,* and *raggy* were harvested to a small extent.

The report from North Arcot has not been received as yet.

South Arcot.—The rivers Pennair and Vellar were in fresh during the month. Tanks received considerable supplies, and an extensive cultivation of both dry and wet grains was in progress.

There was a slight fluctuation in the prices in Chingleput and South Arcot.

Public health was good. Cholera, fever, and guinea-worm existed in parts of the South Arcot District, but were only of a mild type.

Cattle were free from disease in Chingleput, but suffered from *veckai* in the northern section of South Arcot.

Cauvery.—Copious and timely rain fell in this section.

Tanjore.—Ample freshes came down the rivers in Tanjore. The cultivation of *kadupukar, samba, cumboo, raggy,* and *cholum* were progressing.

Trichinopoly.—In Trichinopoly, tanks received good supplies. Irrigating channels likewise were in full flow, in consequence of copious freshes in the rivers. *Kar, samba paddy, sugarcane,* and some dry grains were cultivated, and the crops looked healthy. *Valem paddy* and *indigo* were being harvested in a few localities.

Prices were stationary.

Public health was generally good. Cholera, fever, and small-pox prevailed in a few localities in Tanjore.

There was no cattle disease.

Southern Section.—The rainfall was scanty in Tinnevelly. In Madura it was more abundant, but unequally distributed.

Madura.—The aspect of things improved in Madura. Tanks received moderate supplies; the cultivation of dry grains and the transplantation of *paddy* were progressing, and the standing crops were in good condition. *Cotton* and *indigo* plants were thriving.

Tinnevelly.—*Kar* cultivation in Tinnevelly was contracted owing to the scarcity of water. *Cumboo, varagoo,* and *dholl* were sown in parts of the district.

Prices declined in Madura and remained stationary in Tinnevelly.

Cholera broke out again in Tinnevelly and lingered about the spots it had visited before; but neither in this district nor in Madura, where also it existed, was it attended with any serious results.

West Centre.—The rainfall was good on the Neilgherries and over the greater part of the Coimbatore and Salem Districts.

Coimbatore.—Dry lands in Coimbatore, which had lain waste up to the preceding month, were brought under cultivation. The crops already sown, including garden products, were in good condition. The transplantation of *paddy* under the Cauvery, Amaravathy, Bhowany, and Alyar, was progressing. Under the tanks fed by the Noyel river, dry cultivation supplanted *nunjah* cultivation owing to inadequacy in the water supply.

Neilgherries.—On the Neilgherries, *koraly, samai, raggy, ganjay, wheat,* and *keeray* were in good condition; *coffee* was blossoming.

Salem.—Tanks in Salem, with only a few exceptions, received supplies sufficient to last for two months. Considerable progress was made in cultivating dry and wet grains, and the standing crops fared well, except in the Uttengiri and Ahtoor Taluks, where they suffered some injury from the absence of timely rains. *Cumboo, gingelly oil seeds, cholum, samai,* and *paddy* were harvested in a few taluks. Very little *cotton* was picked during the month.

Prices were stationary in Salem. They had fallen slightly in Coimbatore.

Fever and cholera affected public health in Salem and Coimbatore; no deaths, however, are reported. The sanitary condition of the Neilgherries was good.

Cattle suffered from disease in parts of Salem.

West.—Rain fell in this section, but was more copious, steady, and seasonable in South Canara.

South Canara.—The standing crops in South Canara were in good condition, and in the Uppinangadi Taluk were also ready for the sickle.

Malabar.—The harvesting of the first or *kavi* crop in Malabar commenced, and the yield promised to be a fair one. The cultivation of the second or *magaram* crop was progressing, notwithstanding that in a few taluks insufficient rains had slightly impeded it.

Prices fell in South Canara in the absence of demand for exportation. In Malabar they were almost stationary.

Fever and small-pox in South Canara, and cholera and dysentery in Malabar, slightly affected public health.

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Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency, for the Month of August 1870, *Fusly* 1280.

DISTRICTS.		Prices of Grain and Sea Salt. 2nd sort Rice. Fusly 1279	2nd sort Rice. Fusly 1280	2nd sort Paddy. Fusly 1279	2nd sort Paddy. Fusly 1280	Cholum. Fusly 1279	Cholum. Fusly 1280	Raggy. Fusly 1279	Raggy. Fusly 1280	Horse Gram. Fusly 1279	Horse Gram. Fusly 1280	Sea Salt Fusly 1279	Sea Salt Fusly 1280	Rainfall. Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam.........	314	284	129	114	235	195	181	136	239	191	277	316	5·20	6·50	5·50	7·80	6·25
	Vizagapatam..	409	315	171	132	224	178	224	162	244	181	279	318	6·70	2·90	6·70	1·85	4·53
	Godavery.......	290	236	134	106	162	128	164	122	210	170	246	277	1·42	4·52	2·16	3·14	2·81
	Kistna...........	363	332	164	147	184	203	171	170	267	215	294	360	4·10	2·90	6·35	3·07	4·10
	Nellore	364	326	171	152	154	197	140	163	244	221	262	324	4·36	4·93	3·44	2·61	3·83
Ceded Districts.	Cuddapah......	421	419	199	185	181	210	168	222	211	235	315	355	6·20	6·40	7·57	7·69	6·71
	Bellary...... ...	363	377	148	158	121	170	118	147	160	207	381	449	6·92	3·02	7·53	3·55	5·25
	Kurnool..... .	419	413	184	188	155	197	154	179	233	252	330	366	7·72	6·01	6·19	8·80	7·18
East Centre.	Madras..........				The District Return has not been received.													
	Chingleput.....	474	370	216	198	290	250	258	216	301	258	267	295	6·45	2·10	5·14	5·58	4·82
	North Arcot...				The District Return has not been received.													
	South Arcot...	434	293	195	132	288	143	235	150	241	179	276	325	8·79	7·77	9·22	9·12	8·72
Cauvery.	Tanjore.........	389	254	182	124	240	152	192	128	258	197	254	296	11·12	6·80	5·12	4·20	6·81
	Trichinopoly..	418	309	199	144	204	154	206	152	228	170	308	321	6·83	10·78	6·20	4·40	7·05
Southern Section.	Madura.........	442	344	212	161	184	155	214	165	197	174	291	315	8·33	6·05	4·70	2·91	5·50
	Tinnevelly.. ..	448	432	212	198	234	240	216	199	229	232	291	333	1·57	0·15	0·26	0·25	0·56
West Centre.	Coimbatore ...	475	405	236	200	281	239	230	195	254	195	349	383	4·95	2·13	4·43	0·50	3·00
	Neilgherries ..	711	533	...	...	320	320	320	267	320	246	533	457	...	...	3·03	6·33	4·63
	Salem..........	406	330	186	150	214	160	183	145	196	148	297	339	4·62	5·82	5·70	2·87	4·75
West......	South Canara.	433	372	188	157	...	...	256	241	341	262	254	286	20·00	20·70	19·10	20·50	20·07
	Malabar.	453	393	202	184	...	...	194	174	306	282	294	346	8·74	7·10	8·19	9·15	8·27

Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of August 1870, *Fusly* 1280.

	DISTRICTS.	Cotton. Fusly 1279. Extent.	Cotton. Fusly 1279. Assessment.	Cotton. Fusly 1280. Extent.	Cotton. Fusly 1280. Assessment.	Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo. Fusly 1279. Extent.	Indigo. Fusly 1279. Assessment.	Indigo. Fusly 1280. Extent.	Indigo. Fusly 1280. Assessment.	Market rate of Cake Indigo per Maund of 25 lbs.
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	5,969	11,799	6,041	11,526	165	30	30	3	2	70
2	Vizagapatam ...	8,328	11,873	4,163	9,847	157	305	1,425	1,868	12,494	47
3	Godavery ...	240	711	170	596	144	413	1,272	518	1,422	63
4	Kistna ...	10,687	10,420	9,893	8,445	117	12,981	24,538	27,098	47,779	48
5	Nellore ...	4,670	4,654	3,709	4,026	157	24,704	54,984	29,111	59,232	42
6	Cuddapah ...	9,054	5,682	6,142	5,248	100 to 160	23,267	43,127	10,415	49,856	40 to 56
7	Bellary ...	12,956	9,919	28,517	19,985	127	7,243	12,829	5,705	9,330	60
8	Kurnool ...	31,156	27,332	28,314	22,533	118	39,996	78,560	50,555	83,182	49
9	Madras ...			The District Return has not been received.							
10	Chingleput ...	......	......	......	......	......	2,680	9,191	6,158	15,238	45
11	North Arcot ...			The District Return has not been received.							
12	South Arcot ...	318	604	1,487	3,049	121	21,947	43,312	55,563	1,06,071	42
13	Tanjore ...	302	350	1,940	2,416	146	204	261	1,033	2,196	10
14	Trichinopoly ...	977	1,039	332	197	123	81	262	287	674	14
15	Madura ...	2,350	3,528	3,350	4,825	100	18	57	20	39	40
16	Tinnevelly ...	1,663	962	1,452	699	115	29	63	33	57	31
17	Coimbatore ...	26,602	22,787	33,039	31,182	121	......	......	......	......	29
18	Salem ...	4,966	7,285	5,250	7,545	197	853	4,352	1,141	7,794	36
	Total...	1,20,238	1,18,945	1,33,799	1,32,119	......	1,34,931	2,73,763	1,80,503	3,95,366	......

Revenue Board Office,
Madras, 21*st September* 1870.

(Signed) J. GROSE,
Secretary.

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MISCELLANEOUS.

THE STANDARD OF LIVING IN INDIA.

It is now many years since we first made an attempt to ascertain the pressure of the land revenue upon the soil by an approximate estimate of the whole agricultural produce of the country. In forming these estimates, we have always assumed the consumption of food grains in the country to average about a seer (2 lbs.) per head of population per day. This estimate is objected to as excessive. The *Pioneer* believes that "among "the mass of the population, the classes who get "as much to eat as they want and no more, the "average daily consumption of grain of an adult "male is about three quarters of a seer, that of an "adult female half a seer, that of children a "quarter of a seer. The richer classes, no doubt, "eat more than this in quantity, but they do not "eat much more grain." On the whole, our contemporary believes the average he has given to be "near the mark."

The *Indian Daily Examiner* believes this estimate to be too low, and affirms that in the "part of the "country with which it is best acquainted, (and it "is a part in which the people are rather badly off "than otherwise,) the common allowance of rice "and dholl for an adult male is fourteen chittacks "(28 ounces) per diem. We are also strongly "inclined to think that the three children may "be fairly put down for at least a seer between "them."

A private correspondent in the North-West Provinces also expresses to us his belief that our estimate of 2 lbs. per head per day is too high, and says "it is generally held in the North-West that "the average consumption of grain per head of "population is six maunds or 492 lbs. a year." On the other hand, earlier Indian writers confirm our estimate of 2 lbs. per head. Mr. Colebrook, in his *Husbandry of Bengal,* "reckons the annual consumption of grain for a man at nine maunds (720 lbs.) a head besides cattle," (Galloway, p. 247); and this, if we remember rightly, is Sir Arthur Cotton's estimate. Mr. Maltby (Madras Board of Revenue, 1854) quotes the Collector of Bellary as authority for the statement that "a seer of cholum, the food of the great body of the people in Bellary and the adjoining taluks," is the ordinary consumption of a man per day. The Madras Famine Report [1866] estimates the consumption of the rice-eating population of that Presidency at 560 lbs. per head per year, while Mr. Fischer, of the Shevagungah Estate, in the same Presidency, considers an allowance of 6 lbs. of grain per day as sufficient for a family of five persons. Upon the whole, we are persuaded our estimate of 2 lbs. per head per day is the right one *for the purposes* of this inquiry, and we shall give our reasons for the belief in detail further on. In any attempt to define the standard of living in India it is necessary to remember that it differs in different parts of the country. Thus in the Central Provinces (Belaspore) we are told that "the ordinary practice with "all classes is to have three meals a day, rice "and dholl at midday, rice and vegetables cooked "with ghee in the evening, and rice gruel in the "morning before commencing work. This rice is "called bhassee, being simply the remains of the "night repast filled up with water and taken cold. "Some men are said to get through 3 lbs. of rice "per day. The castes who eat fish and flesh have, "of course, a greater change of diet. On the "whole, the great body of the people may be said "to live comfortably and well; and, as regards "quantity, will probably never enjoy greater "abundance." (Chisholm's Reports, 1866.)

In Nagpore, "most of the Brahmins and the trading and artizan classes take two meals a day, one at about 8 o'clock in the morning, and the other in the evening. The field labourers, as in Belaspore, take three—one in the early morning, one at midday, and one at sunset. All classes, except Brahmins, Marwarees, and a few others, eat animal food when they can get it. All the Mahratta tribes eat fowls and eggs—the food held in so much abhorrence by all the higher castes in Hindustan. With the same exceptions all the people use spirituous liquor distilled from the fruit of the Mohwa tree." (Ross' Report, 1869.)

Where a rice diet, bulky and innutritious, is the staple food of the country, as in Bengal and Madras, it is the practice of the people to take at least two meals a day. In the North-West Provinces, on the other hand, where the staple food is wheat, "the rich Bunnea and Banker, as well as the poor "day labourer, content themselves with a little "parched gram during the day and one meal in the "evening.

"From one year's end to another the diet is the "same unleavened flour cakes, parched grain, and "pulse, or the plain wheaten cake is changed for "cakes composed of wheat and barley flour, or

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" wheat and gram flour mixed; or these grains, " roughly ground, are mixed up with buttermilk; " or, when green on the stalk, boiled into a mess " of porridge. Several kinds of vegetable, fruits, " and berries, too, come in their season to relieve " the sameness of their diet, and aid in preventing " the occurrence of dyspepsia and its attendant " evils."

An analysis of the chief articles of Indian food shows the necessity of supplementing the diet, where its staple is rice, with either meat or fish :—

Proportion of Albuminous and other elements in 100 parts of each article of Diet.

Articles of Diet.	Albuminments.	Starchy and oily matter, &c., not albuminous.	Water.	Name of Analyst.
Wheat	14·67	71·65	13·68	Horsford.
Indian corn	12·8	74·02	13·1	
Barley	12·6	72·8	14·0	
Field peas (*dholl*) ...	26·69	61·03	12·26	
Rice	6·48	80·25	13·26	
Vegetable, average of carrots, radishes, and turnips	5·86	47·23	46·89	
Meat (ox flesh)... ...	19·25	3·1	77·20	Von Bibra.
Fish (whiting)	17·05	0·38	82·95	Payne.
Bajera and jowar ...	Proportions almost identical with those found in Indian Corn.			Forbes. Watson.

In this table, Horsford's analysis of the " field pea" is made to do duty for an analysis of dholl and of *gram*, although the nutritive qualities of the latter are believed to be somewhat less than those of field peas. A highly nitrogenous diet, composed of the most nutritious cereals, with a plentiful supply of vegetables, enables the higher castes of India to dispense with meat altogether; but, where rice is the staple food, meat or fish, or a large admixture of *dholl*, becomes indispensable to health. Rations are commonly given in *attah* (flour) instead of grain, and in these cases it is necessary to bear in mind that a pound of attah is equivalent to 21 or 22 ounces of grain. The rations of a Rajpoot soldier are 1½ lbs. of attah (about 2 lbs. of grain) and 2 ounces of dholl per diem. (Tod's Rajasthan, p. 204). The same allowance is made to the troops in the Bhawalpore State according to the last Administration Report.

So much care has been devoted of late years to the dietary scale of Indian jails to make them as close a copy as possible of the food of the people, that they present, we have no doubt, a very close approximation to the general standard of living in the country. In Bengal the staple food of the people is rice, of which two crops are produced annually. The first harvest is gathered about the end of August; the second and greater one in December. A variety of grain and pulse is also sown, and the harvest reaped from February to April. Fish is so plentiful as to be at times within the reach of the poorest of the people, and there is a universal and vast consumption of vegetable oils. The dietary scale of the Bengal jails for labouring prisoners is as follows :—

Rice	...	140 oz. per week.
Dholl	...	28 " "
Vegetables	...	42 " "
Condiments	...	3½ " "
Meat (or fish)	...	16 (to 20) oz. per week.
Oil (mustard, &c.		4⅜ oz. per week.
Salt	...	3½ " "
Firewood	...	lbs.

This scale represents, we imagine, with considerable accuracy, the common diet of the labouring classes in Bengal. No provision is made therein for the luxuries of sugar, tobacco, betel, or pan. Now, this diet cost the jails of Bengal, we are told, upwards of 27 Rupees per head per annum in 1865. The people take two meals a day, and are in number about 40 millions. Travelling upwards, we come to the North-West Provinces with 30 millions of people, whose universal custom it is, whether rich or poor, to take but one meal a day in the evening, a small quantity of parched grain only being eaten about noon. Rice has here given place to *wheat* as the staple food, and the jail dietary is as follows :—

Attah ...Wheat flour ... 40 oz.		
Bajera " ... 48 "		
Jowaree " ... 48 "		
Indian corn flour. 24 "	160	oz. per week.
Dholl (Cytisus cajan)	16	" "
Gram (parched)	28	" (morning.)
Vegetables	24	"
Ghee and oil (mustard)	2½	"
Chillies (one or more daily)		
Salt (100 grains per day)	1⅜	"
Firewood	5¼	lbs.

This scale was adopted in 1864, the improvement consisting chiefly in the variety introduced into the articles of which the *attah* is composed. It represents, we imagine, a somewhat meagre type of the ordinary diet, and is marked by the absence of sugar, goor, tobacco, and other small luxuries in general use in the country. Rice has here disappeared altogether from the common food of the people. The cost of this diet was Rupees 21 per year in 1865, but reached to Rupees 46 in 1869 from the rise in prices generally.

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Still travelling northwards, we come to the Punjab to find the dietary scale as follows :—

Attah	...Wheat flour $\frac{2}{3}$ / Barley „ $\frac{1}{3}$	140	oz. per week.
Dholl	... ...	... 24	„ „
Vegetables	... ...	... 24	„ „
Condiments	...Garlic. Turmeric. Chillies. Coriander seed Dhurnia.	$3\frac{1}{2}$	„ „
Ghee ...	... ...	... $1\frac{1}{2}$	„ „
Dhai (whey)	... ...	... 18	„ „
Meat ...	... ...	... $5\frac{1}{4}$	lbs. „
Firewood	... ...	... $5\frac{1}{4}$	„ „

The cost of this dietary in 1865 was 22 Rupees per year, and is now about double that amount. It represents, we imagine, the common standard of living amongst the people of the Punjab, but without luxuries of any kind.

In the Sindh jails the diet is a little more generous, and is as follows :—

Rice	24 oz.	
Attah—Wheat ...	48 „	
Bajera ...	48 „	
Jowaree ...	48 „	
		168 oz. per week.
Dholl (moong)		12 „ „
Vegetables		48 „ „
Condiments		$3\frac{1}{2}$ „ „
Tamarind, or kokum... ...		$1\frac{1}{2}$ „ „
Ghee		$4\frac{3}{4}$ „ „
Dhai (whey)		70 „ „
Mutton		16 „ „
Salt		$3\frac{1}{2}$ „ „
Firewood		8 lbs. „

We have here a mixed diet of rice and dry grains; but neither sugar, tobacco, betel, or pan, the common luxuries of India, are found in the scale, but it represents otherwise, we imagine, the full ordinary diet of an adult man throughout Sindh.

In the Bombay jails (Rutnagherry) the scale is as follows :—

Rice ...Wheat ...	72 oz.	
Attah ...Bajera ...	48 „	
...	48 „	
		168 oz. per week.
Dholl (toor and chunna) ...		30 „ „
Vegetables		56 „ „
Condiments (chillies, garlic, &c.)		$3\frac{1}{2}$ „ „
Kokum		$3\frac{1}{2}$ „ „
Sweet oil		$3\frac{1}{2}$ „ „
Fish (many varieties)		13 „ „
Mutton, milk, or ghee		5 „ „
Salt		$3\frac{1}{2}$ „ „
Firewood		7 lbs. „

Although still marked by the same absence of small luxuries, we believe we have here a somewhat favourable representation of the ordinary food of the people. The cost of this diet in 1868 was Rupees 40·407 per head, the prices of all the necessaries of life being considerably higher in Western India than on this side. The jail statistics of the Central Provinces in respect of dietary are so slovenly as to be all but incomprehensible, and present a curious contrast to the general excellence of all official work reported therefrom. As far as we can make out, the dietary scale is as follows :—

Per week.

Attah...(Wheat flour) 140 oz...	or 168 oz. Bajera.	
	„ 168 „ Jowaree.	
	„ 140 „ Rice.	
Dholl ...	... 16 „	Returns uncertain.
Vegetables	... 24 „	
Gram (parched)	... 4 „	
Oil and ghee	... 3 „	
Chillies, condiments	... ...	
Salt ...	... ...	
Firewood ...	... ...	

We doubt if this dietary represents the ordinary standing of living in the Central Provinces. We imagine it is somewhat below that standard generally.

The statistics of Madras are complete, and leave nothing to be desired. The scale is as follows :—

Per week.

Rice	...182 oz.	or 154 oz. Veragoo (warree).
	...	or 168 „ Ragee (natchnee).
	...	or 168 „ Cholum (jowaree).
	...	or 175 „ Cumboo (bajera).
Dholl	... 20 „	
Vegetables	... 18 „	
Tamarind	... $3\frac{1}{2}$ „	(or mango pickle).
Onions	... $3\frac{1}{2}$ „	
*Curry powder.	$3\frac{1}{2}$ „	
Garlic	... $\frac{1}{8}$ „	
Ghee (or oil) ...	$3\frac{1}{2}$ „	or 14 oz. cocoanut.
Buttermilk	... 40 „	or tyre.
Mutton or fish..	15 „	or $7\frac{1}{2}$ oz. saltfish.
Salt	... 7 „	
Firewood	... 14 lbs.	

In looking over these returns it is not the variety, but the sameness, of the food, which is the prominent fact in so vast a continent, comprising nationalities so distinct and so far apart in all other respects. The food of the Punjabee is substantially the same as that of the Bengalee and the Madrassee. The cooking, no doubt, differs widely; but the food, both in quantity and nature, is the same. If we add to these scales the simple luxuries of goor, tobacco, and pan soparee, we embrace almost everything in so far as the masses are concerned. The garden cultivation of India belongs chiefly to the well-to-do classes and the rich.

* *Official Recipe—*

		oz.	dr.
Jail curry powder—	Chillies ...	3	6
	Black pepper ...	1	4
	Coriandar seeds ...	0	6
	Turmeric ...	1	1
	Cummin seed ...	0	6
	Mustard seed ...	0	6
	Vendeum ...	0	

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These dietary scales of the various jails of India show the consumption of cereals to be as follows :

		Per week.
N. W. Provinces...	Attah ...	... 160 oz.
	Gram and dholl ...	44 „
Central Provinces..	Attah ...	... 140 „
	Gram and dholl ...	20 „
Madras ...	... Rice ...	... 182 „
	Dholl ...	... 20 „
Punjab ...	... Attah ...	... 140 „
	Dholl ...	... 24 „
Sindh ...	... Attah ...	... 108 „
	Dholl ...	... 35 „
Bengal ...	... Attah ...	... 70 „
	Rice ...	... 84 „
	Dholl ...	... 14 „

This table contains the consumption of *grain* alone, and, if we estimate 12 ounces of attah to be equivalent to a pound of grain, we shall find the average consumption to be very nearly 2 lbs. per prisoner per day, independently altogether of the allowance of vegetables, meat, buttermilk, condiments, &c. The allowance for European prisoners in Bengal is—

Bread	168 oz. per week.	
Meat	112 „	„
Vegetables	112 „	„

or 3½ lbs. of solid food per day, without taking account of milk, tea, sugar, &c. Large as the allowance seems, it is considerably below the dietary scale of other English jails.

In Tasmania, the allowance of a prisoner is 19¼ lbs. of flour and 10½ lbs. of meat per week, or more than 4½ lbs. per day. In the *Statistical Reporter* which accompanies this issue, we have given a record of interesting experiments made in Bengal some years ago as to the quantity of food the people will consume when they can do so without thought of its cost. The spare diet of the Belgian miners has been remarked upon, and yet we are told they eat 2 lbs. of *bread* a day and 1¼ lbs. of vegetables besides other food.

In estimating the average consumption of food grains in India at 2 lbs. per head per day, and basing our calculations thereon for testing the accuracy of the agricultural returns of the provinces, it must be remembered that we made no allowance for the consumption of grain by cattle, nor for the surplus food which in every ordinary year the harvest must be supposed to yield to replenish the food stores of the country, and provide for the loss which takes place from the constant destruction of large quantities through mildew and other causes. Our statement was as follows :—

The Central Provinces not only grow all the food consumed by their own population, but contrive to export about 1,000,000 maunds of food in ordinary seasons. The population of the provinces is 9,000,000, and the average consumption of food grain per head will not be less than 2 lbs. per day. A very simple calculation, therefore, suffices to show that the harvest *must*, at all events, reach 8,000,000,000 lbs. of food, thus :—

People. lbs. days.		
9,000,000 × 2 × 365	=	6,570,000,000
Add 1-4th for seed corn re-placed	=	1,640,000,000
Add 1,000,000 maunds export	=	82,000,000
The harvest must be	=	8,292,000,000

without any allowance for the consumption of cattle. Now, the total acreage under cultivation with food grain in 1867-69 was, we are told,

	Acres.		*Produce.*		*Harvest.*
Rice ...	...2,532,321	×	579	=	1,466,136,180
Wheat...	...3,313,677	×	405	=	1,342,039,055
Other grains	4,197,561	×	440	=	1,846,907,040
					Lbs. 4,655,082,305

The acreage under grain was well ascertained, and, if the produce of 1867-68 was no more than what is recorded, whence did the provinces get their surplus, 3,600,000,000 lbs., of food from ?

We are unable, upon the most careful review of this passage, to modify it in the least. If it errs at all, we are persuaded that it does so on the side of moderation. Making every allowance for children, we are still of the opinion that, unless the harvest of the Central Provinces amount to 2 lbs. per head of population with a surplus for seed corn and export, the food reserves would be drawn upon steadily every year. In a country where grain is plentiful, the cattle are largely fed thereon. There is probably no province of India in which milch kine are not so fed. The goat will not give its milk without muth or orrid, and, if we were to draw out the estimate in detail, it would be easy to show that our rough calculation of 2 lbs. per head per day is reasonable in the extreme. We have no desire for a controversial victory; but it is plainly important to apply a simple and efficient test to the returns of our settlement officers.

These jail returns throw considerable light upon the cost of food in India of late years. The *Pioneer* thinks that *eight* rupees per head may be assumed to be the cost of the annual food of the population; and, upon this assumption, estimates the gross annual value of the grain crop of the North-West Provinces at about £25,000,000 sterling. The *Indian Daily Examiner* thinks this too low, and believes "the value of the food consumed "annually by each member of the population to be "10 rather than 8 rupees."

That both estimates are too low is shown conclusively by the jail returns of the country. Our prisons are supplied with food in immense quantities under contract, and it is only reasonable to believe that the actual cost per head in these circumstances is below that of the private consumer, the profits of the retail dealer being engrossed by the jail. But what do these accounts show ? Instead of 8 or 10 Rupees per head, they show the cost, at a period long antecedent to the late rise in prices through successive years of drought, to have been as follow :—

Cost of Food per head per Annum.

		Rs.	A.	P.
Punjab Jails,	1865 ...	21	15	2
N. W. Provinces,	„ ...	21	1	6
Bengal,	„ ...	27	1	4
Bombay,	„ ...	40	4	7
Madras,	1868 ...	49	2	4

The *Pioneer* bases its calculations upon a repudiation of "prices now current as abnormal," and assumes that "20 seers per Rupee may be taken as fair. This would give something over 8 Rupees as the value of the annual food of the population per head." What has our contemporary to say to the fact that, with wheat at 33 seers instead

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of 20 per Rupee, the cost in the Punjab jails was 22 Rupees per head in 1865? The contract prices paid in the Punjab in that year and the quantities supplied were—

—	Quantity supplied.	Rate per Rupee.
	Mds. s. c.	Mds. s. c
Wheat, 2nd quality	54,236 28 12	0 33 8
Dholl	9,297 24 14	0 23 3
Meat, free of bone and fat	9,297 29 0	0 7 0
Gram (parched) ...	3,161 26 2	0 25 12
Ghee	605 34 3½	0 2 4
Salt	1,413 26 7¼	0 20 9¾
Condiments, (1 Rupee for 448 prisoners)		
Firewood	33,927 35 10	4 20 5
Vegetables (supplied from jail garden...	....	......

Now, at these rates—which have since been nearly doubled—the cost per head was Rupees 22.

The average net cost of each prisoner in the jails of the North-West Provinces during the year 1868, after deducting a considerable profit made by their labour, was—

	Rs.	A.	P.	
In the Central Jails	46	1	9	per head.
„ Divisional Jails ...	56	10	0	„
„ District Jail	54	13	6	„

and the average contract prices of the food supplied throughout the year was—

Wheat flour... ... ... 15½ seers per Rupee.
Dholl ... ... 11¼ „ „
Gram (parched) ... ... 16⅓ „ „

In view of these statistics taken at the *Pioneer's* own doors, what becomes of its estimate of 8 Rupees per head per year? It must plainly be trebled.

Our contemporary must now, we think, see how greatly mistaken was its estimate of 4th June last of the annual harvest of the North-West Provinces. " Our calculation," it says, " stands thus—

Food of 30,000,000 people ...	£25,000,000
Clothing of do.	„ 1,000,000
Forage crops, garden stuff, and exports	„ 3,000,000
Seed for the next crop	„ 2,500,000
Total...	„ 31,500,000"

Upon this really absurd estimate the land revenue of the Provinces was declared to amount to one-seventh of the gross produce of the land. The cost per head of population in the North-West Provinces for the last two years cannot have been less than 25 to 30 Rupees. Less than that would not have kept soul and body together, while there has simultaneously been an export of produce many millions in excess of our contemporary's estimate. Let the *Pioneer* substitute the following figures for its own estimates, and it will be nearer the mark a good deal:—

Food, 30,000,000 of people, at 20 Rs.	£ 60,000,000
Seed corn, one-seventh of total crop of £70,000,000	„ 10,000,000
Clothing, 2 Rs. per head of population	„ 6,000,000
Forage, pasture, and garden ...	„ 8,000,000
Indigo, sugar, cotton, and other exports	„ 8,000,000
Total...	„ 92,000,000

We have estimated the clothing here at a low figure for a temperate climate like the North-West Provinces. Instead of the land revenue of the provinces being *one-seventh* of the gross produce of the soil, we are reasonably convinced that it is not one-twentieth, as we have repeatedly affirmed.

We have assumed the exports of the North-West Provinces to amount to £8,000,000, a surplus industry of about 2¼ Rupees per head of population. We should think they must be more, but have no means of ascertaining the fact. All the statistical returns of these provinces that we have seen are slovenly in the extreme. Travancore exports are 6 Rupees per head. The average of all India, 2½.—*Indian Economist, 15th October* 1870.

ACT OF THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 5th April 1870, and is hereby promulgated for general information:—

Act No. XVI. of 1870.

THE INCOME TAX ACT, 1870.

An Act for imposing duties on Income and Profits.

Preamble. For the purpose of imposing duties on income and profits arising from offices, property, professions, and trade; It is hereby enacted as follows:—

PART I.

Preliminary.

Short title. This Act may be called "The Indian Income Tax Act."

Extent of Act. It extends to the whole of British India;

Commencement and continuance of Act. It shall be deemed to have come into operation on the 1st day of April 1870, and it shall cease to be in force on the 31st day of March 1871, except as to taxes and penalties then due and incurred thereunder.

Repeal of Acts. 2. On and from the said 1st day of April 1870, the Acts mentioned in the third schedule hereto shall be deemed to have been, and shall be, repealed to the extent specified therein, except as to taxes due under any of such Acts.

The references made in the Court Fees' Act, Schedule II., to the Indian Income Tax Act, shall be deemed to be made to this Act.

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Interpretation clause.

3. In this Act—unless there be something repugnant in the subject or context—

"Magistrate."

"Magistrate" means any person exercising the powers of a Magistrate, or of a Subordinate Magistrate of the 1st Class, and includes a Magistrate of Police and a Justice of the Peace:

"Company."

"Company" means an Association carrying on business in British India, whose stock or funds is, or are, divided into shares and transferable, whether such Company be incorporated or not, and whether its principal place of business be situate in British India or not:

"Firm."

"Firm" includes a Hindoo undivided family:

"Person."

"Person" includes a firm:

"Defaulter."

"Defaulter" includes a firm making default under this Act:

"Collector."

In the case of any Company, or Municipal or other public Body or Association not being a Company, "Collector" means the Collector of Land Revenue of the place or district at or in which its principal place of business in British India is situate. And, in the case of any person chargeable under this Act, "Collector" means the Collector of Land Revenue of the place or district at or in which such person resides.

Exemptions from Act.

4. Nothing in this Act applies to the pay and allowances of Officers, Warrant Officers, Non-Commissioned Officers and Privates of Her Majesty's Forces, or of Her Majesty's Indian Forces, who are not in civil employment, when such pay and allowances do not exceed 500 Rupees per mensem;

or to any moveable or immoveable property solely employed for, or dedicated to, religious or charitable public purposes.

And no member of a firm, which is for the time being chargeable under this Act, shall, as such, be chargeable under this Act.

Power to exempt from Act.

5. The Governor-General of India in Council may, from time to time, by order, wholly exempt from the operation of this Act the whole or any part of the income and profits of any tribe or class of persons in British India.

The Governor-General of India in Council may revoke any such order.

All orders and revocations made under this section shall be published in the *Gazette of India.*

PART II.

Duties on Offices.

Duties on offices.

6. A duty of 6 Pies for every Rupee shall be levied in respect of every office or employment of profit in British India under Government, or under a Company, or a Municipal or other public Body or Association not being a Company, and upon every salary, annuity, or pension paid in British India by Government, or by a Company, or by a Municipal or other public Body or Association, not being a Company, to any person residing in British India or serving on board a ship trading to, and from, British Indian ports, whether on account of himself or another person.

Exemption of incomes less than Rupees 41-10-8 per mensem.

7. No income, amounting to less than 41 Rupees, 10 Annas, and 8 Pies per mensem, shall be chargeable under this Part.

Provision as to Government officials.

8. In the case of every person holding any paid office, employment, or commission under Her Majesty or under the Government of India, or under any local Government, or receiving any annuity or pension from Her Majesty or any such Government,

the duty to which he is liable under this Part shall be deducted from his pay, annuity, or pension at the time of payment by the Examiner of Claims or other proper officer, and shall be deemed to be a tax paid under this Act.

Provision as to servants of Companies and Municipalities.

9. In the case of every person holding a paid employment under, or receiving any annuity or pension from, any Company, or any Municipal or other public Body or Association not being a Company, the duty to which he is liable under this Part shall be deducted from his pay, annuity, or pension, at the time of payment by the Treasurer or other officer whose duty it is to make such payments, and shall be deemed to be a tax payable under this Act.

Payment to Government.

Every such Treasurer or other officer shall, as soon as may be after making such deductions, pay to the credit of the Government of India, or as such Government shall, from time to time, direct, the amount of such deductions, and shall be answerable to such Government for such payment.

Indemnity.

Every Company, public Body, or Association, Treasurer, or other officer as aforesaid, is hereby indemnified for all deductions and payments made in pursuance of this section.

Annual return by Treasurer, &c.

The Treasurer, Secretary, or principal Agent or Manager of every such Company and public Body or Association, shall prepare, and, on or before the 30th day of April in this year, deliver to the Collector, in such form as may be prescribed by the Governor-General of India in Council, a return in writing showing the names of every person holding, at the date of the said return, a paid employment under, or receiving a pension or annuity from, the Company, or Body, or Association whose pay, or pension, or annuity, as such, amounts to 41 Rupees, 10 Annas, and 8 Pies per mensem or upwards, together with the salaries, annuities, or pensions payable by the Company or public Body or Association to all such persons respectively.

Difference between duty under this Act for April 1870 and duty under Act IX of 1869.

10. Whenever the full duty leviable under this Act in April 1870 is not deducted at the time of payment in that month from the pay, annuity, or pension chargeable therewith, the deficiency shall be deducted from such pay, annuity, or pension at some subsequent time of payment.

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PART III.

Companies.

Shipping Companies.

11. The Treasurer, Secretary, or principal Agent or Manager in India of every Company, shall, in the case of a Shipping Company trading between British India and any other country, pay to Government, in respect of one moiety of the net profits made by each of the ships of such Company engaged in such trade, during the year ending on the day on which the Company's accounts shall have been last made up, the duty of 6 Pies in the Rupee,

Other Companies.

and, in the case of every other Company, pay to Government, in respect of the whole of the net profits made in British India by such Company during the year ending on the day on which the Company's account shall have been last made up, the duty of 6 Pies in the Rupee,

Statement of result of accounts.

and shall prepare, and, on or before the 30th day of April in this year, deliver to the Collector a statement in writing signed by him showing the result of such accounts (if any).

Annual return of net profits.

In the case of any Company where no such accounts as are mentioned in this section have been made up within the year ending on the 31st day of March 1870, the Treasurer, Secretary, or principal Agent or Manager of such Company shall prepare, and, on or before the 30th day of April in this year, deliver to the Collector, a return in writing signed by him and stating the net profits made by such ships or by the Company (as the case may be) during the year ending on the said 31st day of March.

Indemnity.

Every such Treasurer, Secretary, or principal Agent or Manager is hereby indemnified for all payments made in pursuance of this section.

PART IV.

Duties on all other Income and Profits.

Duty on income not charged under Part II. or Part III.

12. A yearly duty in accordance with the first schedule to this Act annexed shall be levied upon all income and profits accruing and arising in British India and not chargeable under Part II. or Part III. of this Act.

Trustees, guardians, and committees of incapacitated persons to be charged.

13. The trustee, guardian, curator, or committee of any infant, married woman subject to the law of England, lunatic, or idiot, and having the control of the property of such infant, married woman, lunatic, or idiot, whether such infant, married woman, lunatic, or idiot resides in British India or not, shall, if the infant, married woman, lunatic, or idiot be chargeable under this Part, be chargeable with the said duty in like manner and to the same amount as would be charged to such infant if of full age, or to such married woman if she were sole, or to such lunatic or idiot if he were capable of acting for himself.

Non-residents charged in names of their agents.

Any person not resident in British India, whether a subject of Her Majesty or not, being in receipt, through an agent, of any income or profits chargeable under this Part, shall be chargeable in the name of such agent in the like manner and to the like amount as he would be charged if resident in British India and in actual receipt of such income or profits.

Trustees or agents of persons incapacitated or non-resident to furnish statements of income or profits with declaration.

14. Every such trustee, guardian, curator, committee, or agent shall, when required by the Collector, deliver a statement, signed by him, of the amount of the income or profits in respect whereof he is chargeable on account of such infant, married woman, lunatic, idiot, or non-resident, together with a declaration of the truth of the statement.

Receiver or Manager.

Court of Wards and the Administrators-General.

15. Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrators-General of Bengal, Madras, and Bombay, and the Official Trustees, shall be chargeable under this Act in respect of all income and profits officially in their possession or under their control.

Trustees, agents, receivers, &c., may retain duties charged on them.

16. When any trustee, guardian, curator or committee, or agent is assessed under this Act in such capacity; or when any receiver appointed by any Court, Court of Wards, Administrator-General, or Official Trustee, is assessed under this Act in respect of the income and profits officially received by him;

every person and Court so assessed may, from time to time, out of the money coming to his or its possession as such trustee, guardian, curator, committee, or agent, or as such receiver, Court of Wards, Administrator-General, or Official Trustee, retain so much as shall be sufficient to pay the amount of the assessment.

Indemnity.

Every such person and Court is hereby indemnified for every retention and payment made in pursuance of this Act.

Notice requiring returns.

17. In the case of every person chargeable under this Part whose annual income or profits is, or are, in the Collector's opinion, 2,000 Rupees or upwards, the Collector shall,

and, in the case of every other person so chargeable,

the Collector may,

serve a notice on him requiring him to fill in a return of his income and profits, or of the income and profits in respect whereof he is chargeable, in the form to be prescribed by the Governor-General of India in Council, and specifying the day by which the return is to be made, and the place of the Collector's office at which the return is to be made.

Every such notice shall be signed by the Collector.

The form of the return shall accompany the notice.

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18. Every person on whom such notice is served shall send to, or deliver at, the Collector's office the return duly filled in and signed by him.

Return how made.

A declaration shall be added by such person at the foot of the return that the profits or income stated therein are truly estimated on all the sources therein mentioned.

19. Every person, when required so to do by a notice in the form to be prescribed by the said Governor-General in Council, shall, within the period mentioned in such notice, prepare and deliver to the Collector a list containing, to the best of his belief, the name of every lodger or inmate resident in his dwelling-house, and of any other persons, receiving salary or emoluments amounting to 41 Rupees, 10 Annas, and 8 Pies per mensem or upwards, employed in his service, whether resident in such dwelling-house or not, and the place of residence of such of them as are not resident in such dwelling-house, and also of any such lodger or inmate who has any ordinary place of residence elsewhere, at which he is liable, under this Act, to be assessed, and who desires to be so assessed at such place.

Lists of lodgers and employés.

Such lists shall be signed by the persons respectively delivering the same, and shall be prepared in the form to be prescribed as aforesaid.

20. The Collector shall, from time to time, determine what persons are chargeable under this Part, and the amount that every such person shall be assessed in accordance with the said Schedule; and, in making such assessment, income exempted under Section 7 shall be treated as chargeable under this Part.

Collector to determine persons chargeable.

21. In the case of a person for the first time becoming chargeable under this Part within the year of assessment, the computation shall be made according to an average of his income and profits for such period as the Collector shall, under the circumstances, direct.

Computation when assessee becomes chargeable within year.

22. The Collector shall cause a notice to be served on every person chargeable under this Part, stating—

Notice to persons chargeable.

(1.) The name and the profession, trade, or other source of the income or profits of such person, or of the income and profits in respect of which he is chargeable:

(2.) The year, or portion of the year, for which the duty is to be paid:

(3.) The place or places, district or districts, where such income or profits accrues or arise:

(4.) The amount to be paid;

and requiring him, within fifteen days from the date of the service, to pay such amount.

23. Such amount shall be paid to the Collector, who shall grant a receipt for such payment to the person making the same:

Officer to grant receipts.

Provided that, if such income or profits accrues or arise at or in more than one place or district, the receipt shall be granted and payment made by, and to, the Collector for the place or district at or in which the person mentioned in the notice resides, or (in the case of a firm) at or in which its principal place of business in British India is situate.

Every such receipt shall be signed by the Collector granting it, or by such other officer as he shall from time to time empower in this behalf, and such signature shall be judicially noticed.

Contents of receipt.

24. Every such receipt shall specify—

(1.) The name and source or sources of the income or profits of the person by or on whose behalf the duty is paid:

(2.) The year or portion of the year for which the duty is paid:

(3.) The amount paid, and the date of payment; and

(4.) The place or places, district or districts, where the income or profits accrues or arise; and shall be admissible as *primâ facie* proof of all matters contained therein.

25. Any person objecting to the amount at which he is assessed, or denying his liability to be assessed, under this Part, may, within the period mentioned in the said notice, or, if the Collector is satisfied that the objector has not received such notice, then, at any time within one month from the expiration of such period, apply, by petition, to the Collector, in order to establish his right to have the assessment reduced or cancelled.

Petition against assessment.

Provided that no person who shall have been served with a notice under Section 17 shall be entitled to apply by petition under this section unless he shall have made the return required in such notice on or before the day therein mentioned, or unless he shall satisfy the Collector that he had a sufficient excuse for not making such return.

Proviso.

The petition shall be in the form contained in the second schedule to this Act annexed, or as near thereto as circumstances admit, and the statements therein contained shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints.

Form and verification of petition.

26. The Collector shall fix a day for the hearing of the petition, and, on the day so fixed, or on the day (if any) to which he has adjourned such hearing, shall hear such petiton and pass his order thereon.

Hearing of petition.

Such order may be in favour of the petitioner, or it may simply reject the petition, or it may reject the petition and enhance the petitioner's assessment to an amount to be specified in the order.

If the order be in favour of the petitioner, the Collector shall at once refund the fee on the petition.

If the order simply reject the petition or reject the petition and enhance the petitioner's assessment, the petitioner shall, within one week from the passing of the order, pay the amount mentioned in the said notice or in the order of enhancement (as the case may be).

27. Any person dissatisfied with any order under Section 26 may, within fifteen days from the date thereof, on payment of the sum in which he was assessed,

Appeal from order on petition.

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or to which his assessment was enhanced, present a petition of appeal to the Commissioner of Revenue of the division, whose decision upon such appeal shall be final.

Documents to accompany appeal.

Every petition presented under this section shall be accompanied by a copy of the petition to the Collector, a copy of the Collector's order thereon, and all other documents (if any) connected with the case.

Neither of such copies shall be chargeable under the Court Fees' Act.

Return of fees and excess.

When the decision on such appeal is in favour of the petitioner, the value of the fees on his petition to the Collector and on his petition of appeal, together with the excess paid by him, or (when the decision is that the petitioner is not chargeable under this Act), the whole sum so paid shall at once be refunded.

Power to summon persons to give necessary information.

28. The Collector or Commissioner may summon any person whom he thinks able to give evidence for the purpose of enabling him to determine how the petitioner should be assessed, and may examine on oath the person so summoned and the petitioner, and may require each of them to produce any documents in his possession or power relating to the sources of the petitioner's income or profits accruing or arising in British India.

Power to issue fresh notice.

29. Whenever the Collector has reason to believe that, in assessing any person under this Act, any source of income or profits not specified in the receipt granted to him under Section 23 has been overlooked, which source, if it had then been known to exist, would have increased the assessment, the Collector may cause a further notice to be served on such person stating the amount to be paid in respect of such source, and the provisions contained in Sections 22 to 28 (both inclusive) shall apply to such notice and regulate the procedure thereunder.

PART V.

Penalties.

Treasurers, &c., failing to make payments or deliver returns.

Trustees, &c., failing to deliver statements or declarations.

30. Every Treasurer, Secretary, or principal Agent or Manager failing to make any payment or to prepare and deliver any return required by Section 9,

or failing to make any payment or to prepare and deliver any statement or return required by Section 11,

and every trustee, guardian, curator, committee, or agent failing to deliver any statements or declaration required by Section 14,

shall, for every day during which such default continues, be fined, on conviction before a Magistrate, 10 Rupees.

The Commissioner of the Division shall have power to remit wholly or in part any penalty imposed under this section.

Failure to pay amount of assessment.

31. If any person served with notice under Section 22 does not, within the period specified in the said notice, pay the amount required thereby, he shall, on conviction before a Magistrate, be fined twice the amount mentioned in such notice: Provided that he has not presented a petition under Section 25.

If any such person presents a petition under Section 25 and does not, within one week from the passing of the order thereon, pay the amount, if any, required by such order, he shall, on conviction before a Magistrate, be fined twice the amount mentioned in such order.

Grant of receipt on recovery of fine.

On the recovery of the fine from the person so convicted, the Collector shall grant him a receipt without any further payment.

Every such receipt shall bear date from the recovery of the fine, and, save as aforesaid, the provisions of this Act relating to receipts shall apply to receipts granted under this section.

False statements.

32. Whoever makes a statement in any declaration or list, made or delivered, under Section 18 or 19, which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed to have committed the offence described in Section 117 of the Indian Penal Code.

Whoever makes a statement in any petition presented under Section 25, which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Prosecution to be at instance of Collector.

33. No person shall be proceeded against for any offence under Section 30, 31, or 32, except at the instance of the Collector.

Mode of recovering fines.

34. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras, or Bombay, in the manner prescribed by the Code of Criminal Procedure, and, if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

In the case of a firm, the Magistrate imposing the fine may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the firm or to all or any of the members thereof.

Sections 193 and 228 of Penal Code to apply to proceedings under this Act.

35. In Sections 193 and 228 of the Indian Penal Code, the words "judicial proceeding" shall be taken to include any proceeding under this Act.

PART VI.

Payment.

Tax when payable.

36. All taxes under this Act, except when they are deducted under Section 8 or 9, shall be payable on the 5th day of April 1870.

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Instalments.

Provided that the amount so payable may be paid by four equal instalments: the first instalment to be paid on some day not later than fifteen days after service of the notice mentioned in Section 22 upon the person paying the same, and the second instalment on the 1st day of July, the third instalment on the 1st day of October, and the fourth instalment on the 1st day of January 1871.

Payment by instalments.

37. When any person pays only such first instalment, or first and second instalments, or first, second, and third instalments, and in any of the quarters respectively ending on the 30th day of June, the 30th day of September, or the 31st day of December, dies, or is, by sickness or other infirmity, rendered incapable of exercising the profession or trade (if any) in respect of the profit arising from which he was assessed, or takes the benefit of any Act for the relief of Insolvent Debtors, or conveys the whole of his property in trust for the benefit of his creditors, the amount of the subsequent instalments or instalment shall not be claimable.

Death or insolvency of person paying instalment.

When any firm pays only such first instalment, or first and second instalments, or first, second, and third instalments, and in any of the quarters respectively ending on the days last aforesaid dissolves partnership, or takes the benefit of any Act for the relief of Insolvent Debtors, or conveys the whole of its property in trust for the benefit of its creditors, the amount of the subsequent instalments or instalment shall not be claimable.

Firm paying instalment and dissolving partnership or becoming insolvent.

38. If the Collector has caused a notice to be served on any person liable to pay the said second or any subsequent instalment and requiring him, within seven days from the date of the service, to pay the amount of such instalment (mentioning it), and if the person so served does not, within that period, pay such amount as required by the said notice, he shall, on conviction before a Magistrate, be fined twice the amount so mentioned.

Recovery of subsequent instalment.

Recovery under Revenue Law.

39. In any case of default under this Act arising outside the local limits of the towns of Calcutta, Madras, or Bombay, the Collector may, if he thinks fit, and if the notice mentioned in Section 22, 29, or 38 (as the case may be), has been served on the defaulter, recover the amount of any tax or instalment payable under this Act as if it were an arrear of land revenue.

Optional recovery under Revenue law.

On the recovery of such amount from the defaulter, the Collector shall grant him a receipt without any further payment.

Every such receipt shall bear date from the recovery of the amount, and, save as aforesaid, the provisions of this Act relating to receipts shall apply to receipts granted under this section.

Payment of Taxes and Fines.

40. All taxes levied, and all fines recovered, under this Act shall be paid to the credit of the Government of India, or as such Government shall from time to time direct.

Payment of taxes levied and fines recovered under this Act.

PART VII.

Miscellaneous.

41. All or any of the powers and duties conferred and imposed by this Act on a Collector and on a Commissioner of Revenue may be exercised and performed by such other officers or persons as the local Government shall from time to time appoint in this behalf.

Powers of Collector and Commissioner under this Act may be exercised by other officers.

42. Service of any notice under this Act shall be made by delivering or tendering a copy thereof under the signature of the Collector.

Service of notices.

Whenever it may be practicable, the service of the notice shall be on the person therein named, or, in the case of a firm, on some member thereof.

When such person or member cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the serving officer shall fix the copy of the notice on the outer door of the house in which the person or firm therein named ordinarily dwells or carries on business.

43. Where any Company or firm has several places of business in the territories subject to different local Governments, the Governor-General of India in Council shall have power to declare which of such places shall, for the purposes of this Act, be deemed to be the principal place of business, and, when any Company has several Agents or Managers, which of them shall, for the purposes of this Act, be deemed to be the principal Agent or Manager.

Power to declare principal place of business.

When any Company or firm has several places of business in the territories subject to a single local Government, such Government shall have power to declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

When any person has several places of residence in the territories subject to different local Governments, the Governor-General of India in Council shall have power to declare which of such places shall, for the purposes of this Act, be deemed to be his residence, and, when any person has several places of residence in the territories subject to a single local Government, such Government shall have power to declare which of such places shall, for the purposes of this Act, be deemed to be his residence.

Power to declare residence.

The powers given by this section may be delegated to, and exercised by, such officers as the Governor-General of India in Council or the local Government, as the case may be, shall from time to time appoint in this behalf.

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Governor-General in Council empowered to prescribe forms.

44. The Governor-General of India in Council may, from time to time, prescribe forms for the returns, notices, and lists hereinbefore mentioned.

All such forms shall be published in the *Gazette of India.*

Governor-General in Council empowered to make rules.

45. The Governor-General of India in Council may, from time to time, make rules consistent with this Act for the guidance of officers in matters connected with its enforcement, and may delegate to any local Government the powers given by this section so far as regards the territories subject to such Government.

SCHEDULE I.

Persons whose annual income or profits shall be assessed at not less than			Rs.	500 but at less than Rs.		750 shall pay Rs.		19 8 0
Do.	do.	do. ...	,,	750	do. ,,	1,000	do. ,,	27 0 0
Do.	do.	do. ...	,,	1,000	do. ,,	1,500	do. ,,	39 0 0
Do.	do.	do. ...	,,	1,500	do. ,,	2,000	do. ,,	54 0 0
Do.	do.	do. ...	,,	2,000	... ...	...	...	6 Pies in the Rupee.

SCHEDULE II.

Form of Petition under Section 25.

Stamp
8 Annas.

To the Collector of

The *day of* 187 .

The petition of *A. B.*, of

Showeth,

1*st.*—That, under the Indian Income Tax Act, your petitioner has been assessed in the sum of 27 Rupees for the year commencing the 1st day of April 187 .

2*nd.*—That your petitioner's income and profits accruing and arising from [*here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise*] for the year ending the 31st day of March last were Rupees as will appear from the documents marked presented herewith, and to which your petitioner craves leave to refer.

3*rd.*—That your petitioner has no other source of income or profits, and has no reason to believe that his income and profits during the year commencing the 1st day of April 187 will exceed the said sum of Rupees

Your petitioner, therefore, prays that he may be assessed accordingly, and that the value of the fee on this petition may be refunded [*or* that he may be declared not to be chargeable under the said Act, and that the value of the fee on this petition may be refunded.]

(Signed) *A. B.*

Form of Verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) *A. B.*

SCHEDULE III.

Enactments repealed.

Number and year.	Title of Act.	Extent of repeal.
Act No. IX. of 1869.	The Indian Income Tax.	The whole.
Act No. XXIII. of 1869.	An Act to enhance the duties leviable under the Indian Income Tax Act.	Do.
Act No. VII. of 1870.	The Court Fees' Act.	In Section 32 the words "and the Indian Income Tax Act, Section 20, shall be read as if for the words 'the value of the said stamp' the words 'the fee on the petition' were substituted." In the second schedule, No. 9, the words "Section 21."

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

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THE

MADRAS REVENUE REGISTER.

No. 12.] MADRAS :—THURSDAY, DECEMBER 15, 1870. [Vol. IV.

IRRIGATION FOR SOUTHERN INDIA.

With all due respect for the genius of the great Sir Arthur and his almost equally talented brother, General Frederick Cotton, we beg leave to differ from the manner in which they proceeded to work out their principles of husbanding the water resources of this Presidency. We believe that they made a grand mistake by beginning at the wrong end. They were quite right in advocating the arrest of the rivers of liquid gold that run waste into the sea; but, instead of partially stopping the gentle rivulet in the beginning of its career, and then coming down by a series of gradual and comparatively inexpensive stops, they endeavoured to arrest the swollen and ungovernable torrent by one mighty and superlatively costly work at the very point where the struggle was the fiercest. No doubt they ultimately benefitted the lands on the lowest level; but they left those situated above to continue to suffer the worst evils of natural drought and the want of artificial irrigation. Notwithstanding the great anicuts, or dams, that have been built across the course of some few of our rivers, and which keep back sufficient water for the lands immediately under their influence, it will not be denied that very large volumes still rush over and flow into the sea, which, by a proper system of conservancy, may be preserved for fertilizing the thirsty lands far above the reach of the existing barriers. That the river-borne water can be successfully turned to the development of the hidden resources of India has been fully proved by the genius of the hydraulic engineer whose name we have mentioned. The great works on the Cauvery, Krisna, and Godavery, must convince the most sceptic of the practicability of preventing the waste of water—one of the elements intended by the Creator to be profitably employed for the wants of man. Justice has not been done to the financial results of the irrigation works to which we refer, either by their supporters or their opponents: the former overestimate the revenues derived from them, while the latter denounce them as productive of no good whatever. Of course, as in all such cases of dispute, the truth really lies between the two extremes. One reason for the difficulty experienced in arriving at a correct estimate is to be traced to the fact that the government of the country is mostly carried on by Europeans. The people do not heartily sympathize with their rulers; they have their misgivings, and the consequence is that the ryots are ever apprehensive of their land-tax being increased. They do not tell the truth, or all the truth; the true value of the water conserved and employed is not divulged;

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and, in the great majority of cases where the full use of the water has even been ascertained, the State does not get all that to which it is fairly entitled. The sudden, and often uncalled for, modifications of the revenue settlement have reduced the legitimate profits of Government which ought to be derived from the operation of these works, thus leading to the not unreasonable conclusion that the actual return on the capital invested in the irrigation schemes that have been carried out is much greater than that which is ostensibly realized, and that it is not impossible to secure all that which the State may fairly expect in return for its investment. Our idea is that anicuts should be built across our rivers near their sources, the overflowing waters being caught by similar works on lower levels, as the waters rise over the intervening barriers on their steadfast course to the sea. By these numerous and descending barriers all the higher lands, and then the lower lands, will be successively benefitted, while, from the reduced momentum of the flow, the successive works will be of smaller magnitude and lesser expense than the one stupendous work that is required to arrest a swollen torrent at a point almost where it empties itself into the sea.

We must not, however, cease with scientific works in our endeavour to enrich the soil. It appears to us that the natural agency of the country, the rude and primitive picottah, the engine so well known and used by the ordinary ryot, may be brought into admirable subserviency, in aid and development of our river and channel irrigation schemes. If we look at the map of the Madras Presidency, we find that, not to mention the smaller streams, there are no less than a dozen rivers which carry rich freights of fertilizing material across the country, to be tumbled headlong and profitless into the thirsty ocean. From the Tambrapoorny in the south to the Mahanuddee in the north, volumes of water may be diverted for the service of man, the enriching of the soil, and the maintenance of the State. With the exception of the Cauvery, the Krisna, and the Godavery, scarcely anything has been done to divert, from the ocean, the periodical floods carried almost in parallel lines across the face of the country. The Vypár, the Vigéy, the Velár, the Penár, the Palár, the Sooranamooky, the Pennair, and the Mahanuddee, run almost literally to waste in the mighty bosom of the sea. By means of the gradually descending and comparatively inexpensive barriers we propose, and by channels drawn at right angles to these rivers, there may be a regular net work of irrigation, the blessings of which the rude and primitive picottah is capable of extending to every particle of land enclosed within the meshes of this net. Money invested in such projects would certainly pay a good rate of interest, provided, of course, a judicious selection of localities for the erection of these barriers is made, the cost carefully estimated, and the execution left to the superintendence of the chief Revenue officers of the districts. Anicuts ought to be erected to such a height alone, as just to arrest sufficient water for the levels above, without prejudice to the lands below: the water thus arrested should then be diverted by a canal, if possible, on either side of the anicut; and these canals may be carried to reservoirs, to another river, or may be so continued through the country as to return, if the levels will permit, to the very river from which they sprang. Lands capable of wet cultivation will thus have the means of being brought under cultivation, while elsewhere the water carried along will be equally available for the purpose of being raised for the service of wet or garden produce. The value of water differs with the character and situation of

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the differing localities. It may have to be raised from a great depth, and the soil to be saturated may be very poor; here, necessarily, the price of water must be correspondingly low. Where the water has to be raised from a great depth, but the soil is good, garden cultivation may well be carried on; and the value of water, in that case, will be rated at a higher figure. When, however, water may be obtained at an inconsiderable depth, and the land that uses it is also good, then its value may be taken at the highest reasonable figure. The scale will thus be graduated according to circumstances; and it will be necessary to arrange a classified water-rate beforehand, for the purpose of calculating, with some degree of certainty, the probable returns in revenue. Wherever a project is likely to return at least six per cent upon its cost, it may well be undertaken; but such projects would be of doubtful expediency, as far as the interests of Government are concerned, if the return is likely to be less than six per cent. In carrying out such projects, as implied in our observations above, the Coleroon may be connected with the Velár, the Velár with the Penár, the Penár with the Palár, and the Palár with the Toongabudra and the Krisna, the Krisna with the Godavery, and the Godavery with the Mahanuddee, thus dividing the Peninsula, from Cape Comorin to the northern frontier towards Cuttack, into squares of land whose four sides will consist of tracks of water, readily available for irrigation, which must keep the wolf from the door, or, at all events, reduce to a minimum the evils of those famines that authorities have pronounced to be of periodical recurrence under the fatal influence of certain inevitable workings of the laws of nature.

We are assured that the simple works suggested by us will certainly prove reproductive, and that they may, therefore, be carried out by raising a special loan, Government guaranteeing interest at four per cent per annum. One officer of the Public Works and one of the Revenue Department should be jointly held responsible for the completion of each work in fulfilment of its design and estimate. They will thus in consultation prepare the scheme, execute the work within the estimated amount, fix the water rates upon the several tracts of land, and realize the revenue derivable from them. The numerous failures of similar schemes are entirely attributable to this want of combined action and definite responsibility. One prepares the scheme, another estimates the cost, a third carries out the work, and a fourth, who has nothing to do with any of these officers or their work, fixes the revenue to be derived. Very often they are jealous of one another, and the result is waste of money on all hands with absolute impunity. On the contrary, combined action and a fixed responsibility will ensure proper forethought and eventual success, without waste of money. Projects of this simple kind, aided by the primitive picottah, will give such a stimulus to industry that the term *indolence* will soon become obsolete in India, crime must necessarily decrease, the Government exchequer will fill, public wealth will be multiplied, famines will cease to trouble us, mortality will be reduced, and the sanitation of the country vastly improved. Those that are acquainted with the dry tracts of the Ceded Districts, where irrigation is carried on by picottah-raised water, will not hesitate to believe the practicability of successfully supplementing artificial irrigation by means of this primitive appliance. With a moderate tax, and a judiciously fixed scale of water rates, gardens watered by means of the picottah are known to yield higher profit than the paddy fields of the Garden *par excellence* of Southern India. It is a mistake to suppose that garden lands are invariably of less

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value than irrigated paddy fields. The statistic information on the records of Government will bear us out in this statement. It is a fact, not to be gainsaid, that in many instances, where land has been purchased for public purposes, Government have had to pay heavier prices for picottah-watered gardens than for good wet lands. The officers that have effected the purchases will, if asked, state that the owners of gardens have been more difficult to deal with than the owners of paddy fields, and have been less willing to part with their property. And why? because the picottah has extended the supply and rendered the garden more productive than paddy lands with the ordinary irrigation available. This is a subject well worth the consideration of Government, whose finances are not in a condition to undertake costly projects for the improvement of the land and the prosperity both of State and people.

CORRESPONDENCE.

To the Editor of the Madras Revenue Register.

DEAR SIR,

Adverting to the letter of Tinnevelly *Inquirer*, which appeared in your October issue, and my reply thereto, published in your following issue, I observe that you have rather facetiously remarked, "It is a question whether, under the new Act, Courts are likely to refund excess duty paid in." I think I ought to offer an explanation in order to exonerate Courts acting under the provisions of the new Stamp Act from the imputation indirectly attributed to them by your remark. According to the repealed Stamp law (Act XXVI of 1867), the Courts were *bound* to refund the excess duty paid in if the result of any investigation showed that the estimated value of the property was excessive, however faulty the plaintiff's calculation appeared to be in wantonly overrating the property claimed. Under the new law (Court Fees' Act), the Courts are invested with discretionary power, either to refuse, or to refund, according to the nature of each case, the excess duty paid in. Clause 1, Section 10 of the Court Fees' Act, runs thus, "If, in the result of any such investigation (as provided in Section 9), the Court finds that the net profits, or market value, have, or has, been wrongly estimated, the Court, if the estimation has been excessive, *may, in its discretion*, refund the excess paid as such fee; but, if the estimation has been insufficient, the Court *shall* require the plaintiff to pay so much additional fee as would have been payable had the market value or net profits been rightly estimated. Although it may seem at the first blush that justice is not equally balanced on both sides, yet a little reflection convinces me that the legislature has wisely armed Courts with discretionary power, to use it when they think proper; otherwise the poor defendant would be subjected to unnecessary expense by the plaintiff intentionally overrating the value of the property claimed. What remedy would there be if a plaintiff were to overrate the value of the property fraudulently and intentionally, with a view to harass a poor and helpless defendant? It would be very awkward, indeed, if the representation of the defendant, made at considerable labour and expense, should turn out to the advantage of the plaintiff, even if he succeeds in proving that his opponent has overestimated the property. Under such circumstances, would it be expedient to compel Courts to refund the excess duty, or allow them to use discretionary power? When anything is left to any person to be done according to his discretion, the law intends it must be done with sound judgment and according to law. What is discretion? It is the faculty of discerning between right and wrong, and, therefore, whoever has power to act at discretion, is bound by the rule of reason and law. And, though there be a latitude of discretion given to one, yet he is so far circumscribed that what he does must be necessary and convenient.

I am, Sir,
Your obedient servant,
AN ADVOCATE.

NARRAINDAVERKERRY,
BELLARY DISTRICT,
20th November 1870.

COURT FEES' ACT.

To the Editor of the Madras Revenue Register.

DEAR SIR,

With reference to your question (whether, under the Court Fees' Act, VII of 1870, Courts are likely to refund excess duty paid in), appended to Narraindaverkerry *Advocate's* letter, which appeared at page 429 of your November issue, I am of opinion that no such refund will

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be made by the Courts in the absence of any express provision to that effect in the law. Your correspondent has totally forgotten the legal maxim, "*Nova constitutio, futuris formam imponere debet non prœteritis,*" in expressing his opinion that "the insufficient stamp duty payable in suits filed when Act XXVI of 1867 was in force should be levied according to the provisions of the new Court Fees' Act under the authority vested in the Court by Section 12, and that they could not be levied under Act XXVI of 1867, as it had been repealed when the suits *came on for hearing* and valuation was disputed. The learned *Advocate's* theory appears to have no foundation. Under Chapter 5 of Act VII of 1870, the Court fees should be levied by stamps; and, to ascertain the proper fee leviable on the *institution* of a suit, the table annexed to the first schedule is to be seen. In the title of this table it is distinctly stated that it is the "table of rates of *ad valorem* fees leviable *on the institution* of the suits;" but it is not laid down *anywhere* that the fee should be levied according to the amount of decree. Act XXVI of 1867, which was in force when the suit was *instituted*, was repealed by Section 2, Act VII of 1870, on and after the 1st April 1870, and subsequent to the institution of the suit. Mr. G. F. Wharton, in his observations on Legal Maxims, says, (p. 119), "That an action or "other legal proceeding commenced before the "passing of an Act, in respect of a right of "action accrued before the commencement "of the Act, proceeds as before, notwithstand-"ing that by the Act subsequently passed the "right of action in similar cases be taken "away, or that the proceedings in respect "thereof be changed." The Roman law never suffered a law to have retrospective effect in its operation. Suppose a plaintiff sued for a piece of land, paying 10 Rupees revenue to Government where the settlement is temporary, and valuing it at 80 Rupees, being eight times the revenue, engrossed the plaint on a stamp of 8 Rupees under Act XXVI of 1867, which was in force when the suit was *instituted;* when the case came on for hearing on the 2nd April 1870, Act VII of 1870 had come into operation, and thereupon the defendant raised the objection that the land sued for was valued at 100 Rupees, (for which a stamp of Rupees 7 and Annas 8 is prescribed under Act VII of 1870), will our *Advocate* approve of the plaint, already filed on a stamp of 8 Rupees stamp, being retained on the records as it is, or will he contend that a refund of 8 Annas, being the excess amount under the new law, should be made to the plaintiff? The answer to this question will itself show that our learned *Advocate's* theory is not a sound one.

Yours obediently,

PURGHY.

24*th November* 1870.

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND KINDERSLEY, J.

Malabar law—Stanom lands—Perpetual lease.

Where A sued to recover certain lands which, having been perpetually leased to his family, had been cleared and improved by them; but which his karnaven had illegally surrendered to the lessor's heir, who contended that stanom lands could not be permanently alienated—

HELD *that, as the lease appeared to be a prudent arrangement for the benefit of the stanom-holder and his successors—it being a benefit that waste lands were reclaimed—such lease was binding on the lessor and his successors.*

S. A. 495 *of* 1869.

Arathil Kandoth Kandappen *v.* Kottayath Keyaka Kovilagatha Sungara Vurma Raja.

THIS was a suit brought to obtain a declaration of title and right to a perpetual lease over ten plots of land, and to recover possession of eight of them and a portion of No. I., and Rupees 807-15-1, with future rent, and interest from date of suit. The plaintiff alleged that the lands were the property of Kudiravatam Brahmaswam, of which defendant, heir of the late Rajah, was owner, and that they had been leased in perpetuity to plaintiff's deceased karnaven in 1824. This lease was executed by the Ellia Rajah, and was renewed by the Mutta Rajah in 1831. Plaintiff further stated that he had cleared the lands which before were waste, and his late karnaven (who had been removed for mismanagement) had illegally made over to defendant possession of the aforesaid eight plots and portion of No. I.

The defendant, heir of the late Rajah, asserted that the deeds sued on were forgeries; that plaintiff's karnaven held on a simple lease, which he cancelled by giving up possession to the lessor, defendant's ancestor, before he had been removed from his office of karnaven; that it was customary for Brahmaswam lands to be entered in the Government accounts in the name of the tenant; and that the Ellia Rajah had no right to alienate Brahmaswam lands. The Principal Sudr Ameen held the latter plea to be a good one, also that plaintiff's alleged documents concerning the lease were not proved. He, therefore, dismissed the plaintiff's suit. The Civil Judge of Tellicherry, Mr. Leman, before whom the case came in appeal, was of opinion that the Principal Sudr Ameen was wrong in finding the lease documents forgeries; if the plaintiff had forged them, why did he increase his difficulties by forging two documents, entailing on himself the trouble of showing that the Ellia Rajah first made the lease, which was afterwards confirmed by the

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Mutta Rajah, and why with the names of deceased people as witnessess, thus weakening his own case? As to the appearance of soot on the cadjans alluded to by the lower Court, Mr. Leman quite failed to find it, nor could he see any reason for smoking them when the cadjans had been taken from the Government Stamp Office the year that they were executed. Then, as to the second ground of the Principal Sudr Ameen's decision, that this alleged perpetual lease was called *jenma koya* and was known as *karomgery* in South Malabar, and that alienations of this sort of tarwad property were not recognized, and, therefore, much less could stanom property be alienated, the Civil Judge failed to find any decision in which this principle had been laid down, and the only one to which his attention had been called was Special Appeal No. 402 of 1857, where the Sudr Court had held that a *jenma kayo* was not a perpetual alienation. Mr. Leman, however, found that stanom lands could be alienated, as was clear from the decree in the appeal suit against which Special Appeal No. 402 of 1857 had been brought. It also was clear that, if such consent were necessary, this alienation had been made with the consent of the Ellia Rajah, who was the only person to be consulted, and the Mutta Rajah ratified what he had done. The alienation was not damaging to the *stanom*, for the land which had been waste was now cultivated, and it was for the benefit of the landlord to get this land under cultivation. Such being Mr. Leman's view of the case, he thought that the plaintiff's karnaven had no power to relinquish the lease, as it was clear that such relinquishment could not have been made for the benefit of his tarwad; he, therefore, found that plaintiff's documents were proved, and that plaintiff was, under them, the lessor of defendant's lands, and accordingly decreed for plaintiff as sued for. Defendant appealed to the High Court, on the ground that the perpetual lease granted to plaintiff by the late Rajah was invalid against his successors. Mayne for appellant; O'Sullivan for respondent.

The High Court delivered the following

Judgment:—30th May 1870.

It has not been contested that, if the land in dispute was waste and the lease was a prudent arrangement for the benefit of the stanomholder and those who might succeed him, the lease would be binding. But it has been urged that the Civil Court has not so found, and that there is no evidence in the record to warrant such a finding. We are of opinion that the judgment of the Court must reasonably be understood as amounting to that finding, and there is clearly evidence in the record from which the Court might so decide. Upon this ground strictly we think the appeal must be dismissed with costs.

HOLLOWAY AND INNES, J. J.

Hereditary village offices—Jurisdiction—Act II of 1864, *and Regulation VI of* 1831.

In a suit by a Curnum for dues and emoluments of his office wrongfully withheld by certain ryots, the Principal Sudr Ameen was of opinion that under Section 52, *Act II of* 1864, *the District Munsiff had jurisdiction to try such a claim—*

HELD, *in special appeal, that under Section* 3, *Regulation VI of* 1831, *claims to the possession and enjoyment of the emoluments of village offices were not cognizable by the ordinary Courts of Judicature, but by the Collector, Section* 52 *of Act II of* 1864 *merely providing for the recovery of arrears already ascertained.*

S. A. 605 *of* 1869.

Kalavagunta Chinnamrazu *v.* the Collector of the Kistna District and others.

IT appeared from the plaint that plaintiff, a curnum of an unsettled district, preferred a summary suit before the Collector for the recovery of mirassi emoluments from the ryots. Both parties entered into a razinamah, plaintiff remitting a portion of his claim, and defendants promising to pay the balance within three years from Fusly 1271. Defendants failed in this engagement, and also in the payments due for subsequent fuslies. Plaintiff applied to the Tahsildar, who referred the claim to the Collector; that officer adjudged payment to the plaintiff. The defendant-ryots still refused to pay for the period adjudged, and plaintiff again appealed to the Revenue authorities to recover the sum due by attachment of defendants' property. The Collector now, however, disallowed a portion of the claim, and left plaintiff to recover the balance by his own means. Plaintiff thereon sued the ryots (defendants) for the amount by attaching their property, and included the Collector as a defendant in the suit. The District Munsiff of Masulipatam decreed for plaintiff. From this decision the Collector appealed, on the ground that by Section 3, Regulation VI of 1831, claims to enjoyment of emoluments pertaining to the hereditary office of curnum were not cognizable by the ordinary Courts of Judicature, such as the District Munsiff's Court, and that the Munsiff was incompetent to decide upon the amount of fees due to a village officer. The suit came in appeal before Mr. James Wilkins, on the Principal Sudr Ameen's side of his Court at Masulipatam; he was of opinion that the Regulation quoted by the Collector entirely excluded claims like those of the plaintiff from the cognizance

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of the ordinary Courts, whilst, on the other hand, Section 52, Act II, 1864, prescribed that all such emoluments and dues might be recovered in the same manner as land revenue, namely, through the Collector by the sale of the defaulter's property, or by execution against his person; and, under Section 59 of the same Act, parties aggrieved could apply to the Civil Court for redress. The Principal Sudr Ameen further remarked that, although plaintiff's claim clearly fell within the denomination of dues referred to in Section 52, Act II of 1864, yet it could not be operated upon by that Act unless it had not been otherwise specially provided for. There was, however, no special provision relating to the recovery of emoluments due to village officers in Regulation VI of 1831; that Regulation had been enacted to prevent misappropriation of the emoluments and to maintain the due efficiency of the officers, and it was expressly observed by the Select Committee, in their statement of Objects and Reasons, annexed to the Bill (Act IV of 1864), that the Revenue authorities had no power to settle or enforce payment when the fees due to village officers were withheld, though, by Regulation VI of 1831, they had power to adjudicate upon the claims of persons entitled to receive the fees. It appeared from the Collector's last order that he was of the same opinion. Hence the Principal Sudr Ameen concluded that the present suit was cognizable by the Court of the District Munsiff under Section 59, Act II of 1864, and he could see no reason for disturbing the decree appealed from. From this decree the Collector appealed to the High Court. The Government Pleader for the Collector, the respondent not being represented.

The High Court delivered the following

Judgment:—*29th June* 1870.

We are of opinion that this suit is barred by the operation of Section 3 of Regulation VI of 1831, as contended by the appellant. That section provides that claims to the possession of, or succession to, hereditary village or other offices, or to the enjoyment of any of the emoluments annexed thereto, shall not be cognizable by the ordinary Courts of Judicature. It is admitted that this is a claim for the emoluments attached to the office of curnum in an unsettled district; but the Principal Sudr Ameen has decided that there is jurisdiction, apparently because Section 52 of Madras Act II of 1864, being needed to effectuate an order passed, the application of that section lets in all the other provisions of the Act, and Section 59 gives this action. Section 52, however, deals only with the mode of recovering the arrears after they have been ascertained, and such recovery, or perhaps failure or refusal to recover, could alone be proceedings under this Act. The complaint here, however, is of the amount of arrears determined by the Collector, and it is obvious that the Regulation in the case of curnums of unsettled districts withdraws this question from the cognizance of the Civil Courts.

The decree of both the lower Courts must be reversed, and the original suit dismissed. As this special appeal was admitted after the time for appealing had expired, we shall not allow the third defendant (the Collector) any costs.

SCOTLAND, C. J., AND INNES, J.

Antecedent lease—Subsequent sale to third party —Purchaser and lessee.

A, having purchased certain land from B and C, sought to eject D, who claimed to remain in possession by a virtue of an antecedent lease from B and C—

HELD *that D's claim was indefeasible, and that B and C could only sell, and A purchase the land, subject to that claim.*

S. A. 378 *of* 1869.

Siddalingappa *v.* Nursingappa.

PLAINTIFF sued to recover possession of certain lands which he claimed, by right of purchase, from the former proprietors (first and second defendants), under a duly registered deed of sale (A) dated 6th September 1865. He further sued for Rupees 150 for loss of produce, owing to third defendant having trespassed upon the land. First and second defendants allowed the suit to go *ex parte*. Third defendant denied the allegations contained in the plaint, and pleaded that the plaintiff had colluded with first and second defendants to deprive him (third defendant) of the land, which he had enjoyed since September 1862, when he obtained it from first and second defendants on a twelve-years' lease. The District Munsiff dismissed the suit on the ground that the deed of sale A. was a collusive document, and upheld the lease bond No. I. Plaintiff appealed to the Civil Court of Bellary. Mr. Irvine, the Civil Judge, found that the first and second defendants (proprietors of the land) had transferred their rights to plaintiff by the deed of sale A.; that defendants did not dispute this; that this absolute sale could not be affected by the temporary occupation of the land under a lease by third defendant; that the lease deed contained a condition that, if third defendant's possession were at any time disturbed, the first and second defendants should make good the loss so incurred by him. On all these grounds the Civil Judge was of opinion that the lease deed No. I. could in no way affect the sale deed A., which gave to plaintiff an absolute right. From this decision the third defendant appealed on the ground, *inter alia*, that the subsequent sale could not affect his right to hold the land for the full term of his lease. Parthasarady Iyengar for

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appellant; Gould for respondent. At the first hearing the High Court referred an issue for trial to the Civil Judge with the following

Judgment:—18th February 1870.

It is clear that the first and second defendants could only sell the land subject to the lease which they had already erected in favour of the third defendant. But, before disposing of this appeal, it is necessary to require the lower Appellate Court to record a distinct finding on the issue, *whether the lease No. I. is genuine. This question was expressly raised in the plaintiff's second ground of appeal to the Civil Court.*

The Civil Judge having returned a finding in the affirmative, the High Court delivered the following final

Judgment:—11th April 1870.

To the issue referred for trial on the 18th February 1870 the Civil Judge has returned a finding that the lease No. I. is genuine. It only remains, therefore, to reverse the decree of the Civil Court, and restore that of the District Munsiff. The third defendant (special appellant) is entitled to his costs in this and the lower Appellate Court.

HIGH COURT—CALCUTTA.

JACKSON, L. S., AND GLOVER, J. J.

Bhuban Chandra Shome (defendant) *v.* Ramdayal Shamanta and others (plaintiffs).*

Special appeal—Objection not taken in the Courts below.

The High Court allowed objections to be taken by a defendant which had not been taken in either of the lower Courts.

Baboo *Bhagabati Charan Bose* and *Ambika Charan Banerjee* for the appellant.

Baboo *Mahendra Lal Mitter* for the respondents.

JACKSON, J.—It appears to me that the decision of the lower Appellate Court in this case cannot be supported with reference to the authorities on the point before us. The suit was for enhancement, and was tried before the Assistant Collector of Burdwan, who, after hearing the evidence on both sides and finding that evidence to be contradictory, ordered an inquiry by an Ameen; and, on the report of that Ameen, made a decree in favour of the plaintiff. The decree made did not confirm precisely the rates claimed by the plaintiff; but took, as it were, a middle course between the allegations of the plaintiff and those of the defendant. The Ameen reported that the land of the village in which the defendant's tenure was situated was divided into four classes, and he found, not precisely in conformity with the whole of the evidence, but upon such part of the evidence as recommended itself to him, that those four classes of land paid certain rates which he stated; and, as the greater portion of the lands of the defendant was found to belong to the second of those classes, he reported that the defendant was liable to pay that rate on that quantity of land, and at that rate; accordingly the decree was given.

The defendant upon this appealed to the Zillah Judge, and the ground that he seems to have taken before the Judge was that the evidence upon which his lands had been found to belong to the second quality or class was not sufficient to support the finding of the Court below. The Judge, however, affirmed the judgment of the lower Court; and, upon review, only modified his own judgment and the judgment of the Court below, so far as to give the defendant a slight allowance in respect of certain lands alleged to have been taken for public purposes.

The defendant comes before us in special appeal, and, for the first time, takes the ground that neither the notice nor the evidence given by the plaintiff complied with the provisions of the law under which enhancement was sought for. That provision was the first clause of Section 17, Act X of 1859, which describes the ground of enhancement as being "that the rate of rent paid by such a ryot "is below the prevailing rate payable by the same "class of ryots for land of a similar description, "and with similar advantages in the places "adjacent." Now, it is not disputed by the plaintiff, respondent before us, that the notice and the evidence fell greatly short of those requirements; and the only question upon which we have had a doubt is, whether the defendant ought to be allowed to prevail upon this ground taken for the first time in special appeal.

No doubt, if the objection referred only to the notice, we should have been inclined to hold that the defendant, by his silence upon this subject in the Court of first instance as well as in the Court of Appeal, and by his going to trial contesting the case upon the evidence, had waived that objection. But nothing can get over the want of evidence, and with some reluctance I find myself compelled to follow the decisions which have been repeatedly given upon this point, namely, that a defect of this kind is fatal to a suit for enhancement.

But I think that, upon consideration, it is not unreasonable that such an objection should prevail. In the first place, we must bear in mind that the suit brought by the plaintiff before us is one of the commonest kind, and that such suits probably form a very large proportion of the whole number of suits brought in Bengal. It is very little, indeed, to ask from a plaintiff, who is seeking, as part of a system, to increase his receipts derivable from his tenants, that he should frame his suit, and also prove his case in exact conformity with the provisions of law, which enable him to increase his profits; and I think there is no hardship at all, so far as he is concerned, in binding him to an exact observance of the law.

Then, as regards the Court, it appears to me that a Court administering a law like Act X of 1859 is bound to satisfy itself that the decrees it

* Special Appeal, No. 219, of 1870, from a decree of the Judge of East Burdwan, dated the 25th August 1869, affirming the decree of the Assistant Collector of that district, dated the 31st March 1869.

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makes are exactly borne out by the provisions of the law.

If the conclusion of the Deputy Collector and of the Judge had been fully and completely stated in this case, it must have amounted to something like the following upon the evidence adduced by the plaintiff and by the defendant, and the word "evidence," of course, includes admission. "I find that the defendant, who holds a certain quantity of land of a particular description, is paying rent at a rate which is below the prevailing rate payable by the same class of ryots for lands of a similar description, and possessing similar advantages in the places adjacent, and, consequently, by the first clause of Section 17, Act X of 1859, he is liable to have his rent enhanced. I find that the measure of enhancement is so much, and consequently I give judgment for the plaintiff at so many rupees and so many annas." That stated fully, I think, would be the conclusion at which the Court would have to arrive before it could give the plaintiff a decree in the present case.

Now, is there anything on the record which would justify the Collector's Court in giving such a decree to the plaintiff? It would appear there is nothing. It is said that the defendant did not dispute these points; but the system of our procedure in this country is not such that, if a defendant fail to dispute or contest any point, he thereby admits it. On the contrary, if the defendant fails altogether to appear and allows judgment to go by default, the plaintiff is bound to prove his case just as much as if the defendant had appeared and denied the claim.

I think, therefore, we are bound to say that the judgment of both the Courts below in this case of enhancement are not in accordance with the law. At the same time it seems to me that the defendant has been extremely remiss in failing to take this ground of objection in any stage of the proceedings below, and, therefore, while I think we ought to reverse the decision of the Deputy Collector and of the Judge, and to order the dismissal of the plaintiff's suit, we ought to do so without making any order as to the costs of this appeal.

GLOVER, J.—I am of the same opinion.—*15th June* 1870.—*Bengal Law Reports, Vol. V., Part XXVII.*

[*Appellate—Civil.*]

BAYLEY AND NORMAN, J. J.

Baboo Tundan Sing (one of the defendants) *v.* Baboo Pukhnarayan Sing and others (plaintiffs).*

Act I of 1845, *Section* 21—*Act XII of* 1841, *Section* 22—*Regulation XI of* 1822—*Purchaser at a revenue sale—Revenue sale—Benami purchase—Manager of a joint Hindoo family.*

A purchase by a managing member of a joint Hindoo family, in his own name, at a revenue sale held under Act I of 1845, *is not affected by Section* 21 *of the Act. A suit by one of the members, for recovery of possession of his share of the property, purchased by the managing member in his own name, but for the use of the family, is not a suit to oust a certified purchaser, and, therefore, not affected by Section* 21, *Act I of* 1845.*

* Regular Appeal, No. 39, of 1869, from a decree of the Judge of Patna, dated the 15th September 1868.

THIS suit was instituted before the District Judge of Patna. The plaintiffs were Pukhnarayan Sing, Kasi Sing, and Tilakdhari Sing.

The defendants were—1, Tundan Sing; 2, Mattru Sing; 3, Lodi Sing; 4, Mahtun, bearer; and 5, Tukan Sing.

The plaintiffs and the first, second, third, and fifth defendants were members of a joint Hindoo family.

The suit was for recovery of possession, after adjudication upon the rights and interest of the parties respectively in their shares in certain estates and house-property in Mouza Mahusa, and for confirmation of possession of certain other estates in Pergunnahs Ghiaspur, Bhimpur, and Pellich, acquired at the time of joint tenancy, from the *ijmali* or joint fund, and the profits of the ancestral property and the ancestral funds. The suit was valued at Rupees 1,69,435-10, including Rupees 1,09,410-1-10, mesne profits, from 1269 to 1274 (1862 to 1867), as per account and boundaries detailed before. The cause of action arose on the 27th Magh 1268 (8th February 1861), the date of separation from common residence.

Much of the property in respect of which the suit was brought had been purchased by the defendant Tundan Sing, as he alleged, after a separation in the family (which he said took place in 1243 (1836) in his own name and out of his own resources, which he had acquired by trading on his own account. The defendant, however, failed to prove the separation set up by him, and it appeared that, although he had been allowed to remain for a long time in sole possession of the property which was the subject of suit, he had, in fact, bought it as managing member for the joint family, and on the family account. Part of the property was bought at sales for arrears of Government revenue under Regulation XI of 1822 before the passing of Act XII of 1841 and part at sales for arrears of Government revenue after the passing of that Act. Tundan Sing's name alone was recorded as that of the certified purchaser, and it was contended, on his behalf, with reference to Act XII of 1841, Section 22, and Act I of 1845, Section 21, that, as he alone appeared to be the certified purchaser, the suit against him ought to be dismissed.

The *Advocate-General* and Mr. *Money* for the appellant.

Mr. *Paul* for the respondents.

NORMAN, J., after going through the facts of the case, commenting on the evidence generally, and observing, "No doubt a strong inference in favour of the defendant arises from the acquiescence of the family in the dispossession for so long a time. But I am not prepared to say that such inference ought to prevail against the evidence on which the Judge has based his decision, especially if we regard the practice in native families of leaving almost all matters in the hands of one and only one acknowledged *kurta*, or head of the joint-family," continued—The only remaining question

* But see Section 36, Act XI of 1859.

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was that argued by the Advocate-General as to the property purchased by Tundan Sing in his own name at sales for arrears of Government revenue.

Item No. 1, eight annas of Mahura, was purchased prior to the passing of Act XII of 1841, at a sale for arrears of Government revenue under Regulation XI of 1822. It is admitted that the Regulation in question contains no provision which can affect the rights of the plaintiff in the present suit. The 19th and 20th sections of that Regulation empowered the Government, in case of a *benami* purchase, to annul or cancel the sale, and to dispossess the purchaser.

As to the purchases made after the passing of Act XII of 1841, Section 22 of that Act provides "that any suit brought to oust a certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs." Act XII of 1841 was repealed by Act I of 1845, and it has been decided, and we think rightly decided, by Mr. Justice Mitter, in *Booa Russoolee* v. *Nawab Nazim of Bengal,** that, by such repeal, the defence which the nominal purchaser would have had in a suit by the real purchaser is taken away.

Then comes a question as to a purchase of six annas of Mahespur made by the defendant Tundan Sing, at a sale for arrears of Government revenue, after the passing of Act I of 1845.

The case of a purchaser at a sale for arrears of Government revenue made by the manager of a joint Hindoo family in his own name, on behalf of the joint family, does not appear to be expressly provided for by Section 21 of Act I of 1845, and it would only be by a forced construction that such a case could be brought within the terms of that section. The section is a penal one, and should, we think, be construed strictly. The words are, "Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs."

I think it must be taken as found as a fact that the purchase of Mahespur was made by Tundan Sing, as managing member of the joint family, on behalf of himself and the other members of the family. The suit is not brought against Tundan Sing on the ground that the purchase was made on behalf of another person and not of himself. The purchase was, in fact, admittedly made by him on his own behalf, though others may be interested with him. The suit is not brought to oust him, but to establish the rights of his co-sharers as joint owners with him. The language of Section 36, Act XI of 1859, is different from that of Section 21 of Act I of 1845. Words are introduced in the latter enactment which may probably include the case of a purchaser by the managing member of a joint family in his own name. It stands as follows, "Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, or on behalf partly of himself, and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs."

On the whole, we are of opinion that a purchaser at a sale for arrears of revenue under Act I of 1845, made by the managing member of a joint Hindoo family in his own name, but on behalf of the joint family, is not affected by the 21st section of that Act; and that, notwithstanding anything contained therein, the members of such joint family may sue to enforce rights acquired by them under such a purchase, as against the managing member, though he is the sole certified purchaser.

The result is that, in our opinion, the appeal must be dismissed with costs.—*Appeal dismissed.*—*20th April* 1870.—*Idem.*—*Part XXVIII.*

* *April 26th*, 1869.—In this case, Mitter, J., relied on *Raja Satya Saran Ghosal* v. *Mahesh Chandra Mitter*, 2 B. L. R., P. C., 23, q. v., and also on *Gopee Mohun Thakoor* v. *Raja Radhanath*, 2 Knapp's P. C. Cases, 228, as illustrating the doctrine that "a statute which does not declare a particular transaction to be illegal, but which is merely restrictive of jurisdiction; or, in other words, which simply prohibits the cognizance of a suit based upon that transaction, can be set up as a bar to such suit, after it has been repealed by a subsequent Act of the legislature."

HIGH COURT—N. W. PROVINCES.

[*Appellate Jurisdiction.*]

TURNER, OFFG. C. J., AND TURNBULL, OFFG. J.

Revenue Courts—Jurisdiction—Rent—Kabuliat.

Clause 3 of Section 23 of Act X of 1859, giving to Revenue Courts the adjudicature of complaints of excessive demands of rent, the Courts are not deprived of jurisdiction in such cases because incidentally they may have to determine as to the genuine character of a kabuliat.

S. A. 670 *of* 1870.

Kashee Ram (appellant), *v.* Gunga Pershad and others, (respondents).

THIS was a special appeal against the decree of Mr. H. G. Keene, Officiating Judge of Futtehpore, in Appeal Suit No. 2 of 1870.

Pearey Mohun and *Adjoodhya Nath* for the appellant, the plaintiff.

Hanooman Pershad and *Lulta Pershad* for the respondents, the defendants.

The particulars of this case will appear from the following judgment:—

The plaintiff complained that the defendant demanded from him excessive rent.

The defendant admitted he had made the demand alleged; but declared it was not excessive, in that it was agreed to by the plaintiff, as evidenced by a kabuliat.

The execution of this kabuliat is denied.

By some means or other the suit came for decision before a gentleman who was not competent to try it, namely, the Assistant Collector. He proceeded to try and dispose of it, and, having heard the evidence, and written an opinion, the Collector, who should have tried it, was good enough to adopt the whole proceedings as his own

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by inscribing the word "confirmed" at the foot of the Assistant Collector's proceedings. The Judge, on appeal, did not notice this irregularity; but, considering that the kabuliat had been rejected on insufficient grounds, he remanded the suit for trial under Section 351.

It is needless to point out that this procedure was erroneous on the ground on which he proceeded, as the suit had not then been disposed of on a preliminary point, although it would have been a proper order had he founded it on the irregularity of the proceedings in the Court of first instance. When the case came back to the Court of first instance it was brought on the file of the Officiating Collector, who, after examining the parties, dismissed the suit as incognizable by a Revenue Court, and this decision the Judge has, on appeal, affirmed.

It appears to us that the suit unquestionably falls within the scope of Section 23, Clause 3 of Act X of 1859. The words of that clause restrict to Revenue Courts the adjudication of complaints of excessive demands of rent. The plaintiff avers such a demand has been made, and the defendant, not denying the demand, justifies it.

The circumstance that it will be incidentally necessary for the Revenue Court to determine as to the genuine character of the kabuliat does not deprive that Court of jurisdiction.

The judgments of the lower Courts must be set aside and the case remanded to the Court of first instance for re-trial under Section 351; costs of this appeal to follow the event.—*1st August* 1870.—*N. W. Provinces Reports, Vol. II, Part VII.*

SPANKIE, J., AND TURNBULL, OFFG. J.

Lease of zemindary land—Hereditary—Tenancy from year to year—Onus probandi.

Where, by an old puttah, lands forming part of a zemindary had been leased at a specified rent, there being no words in the puttah importing the hereditary and istimrari character of the tenure, the absence of such words may be supplied by evidence of long uninterrupted enjoyment, and of the descent of the tenure from father to son, whence that hereditary and istimrari character may be presumed.

To rebut the evidence afforded by long uninterrupted enjoyment and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will, to prove such assertion.

S. A. No. 377 *of* 1870.

Deen Dyal Singh and others (appellants), *v.* Heera Singh and others, (respondents.)

THIS was a special appeal against the decree of Rao Kanjee Sahae, Subordinate Judge of Ghazeepore, dated the 28th January 1870.

Pearey Mohun and *Ali Ahmud* for the appellants, the defendants.

Hyder Hossein, Dwarka Nath, and *Bunwaree Lal* for the respondents, the plaintiffs.

The particulars of this suit will appear from the following judgment:—

This is a suit to eject the defendants from 19 biswas, 17 biswansees of land, and to recover, mesne profits.

The plaintiffs claimed the right of ejectment on the ground that the defendants hold the land under a lease terminable at pleasure, and that they refuse to surrender, although notice was given to them of the plaintiffs' intention of resuming the land in Fusly 1275, and that they thus continue to hold wrongfully as trespassers, and are liable to the plaintiffs for the mesne profits of the land for Fusly 1276. They allege that the lease was by a parol agreement; that there was no fixed term of years stipulated; and that the tenancy of the lessees was a mere tenancy-at-will from year to year. They admit that the lease was granted by their progenitors to the progenitors of the defendants at least one generation back, and that it has subsisted now fully forty years. It is also admitted that they had, on a previous occasion, brought a suit for recovery of arrears of rent against certain sub-tenants of the defendants, which, on the defendants' intervention, was dismissed. Defendants contended, on the other hand, that the lease was a written one, and in perpetuity. They were unable to produce it, as it had been lost during the mutiny; but the holding had been in their family for nearly a century, and had descended to them in regular succession from father to son; and, therefore, so long as they paid the fixed rent stipulated, which, in fact, they had paid in full to Fusly 1275, they could not be ejected.

Two similar suits were brought by other plaintiffs, against the same defendants upon the same ground of action, for ejectment from certain other plots of land held under similar conditions, in which the defence set up and the issues between the parties were precisely the same.

The plaintiffs in all three suits are sharers (to the extent of one-third share each) in the same "patti dalip," and the several plots of land for which each set of plaintiffs now separately sues appear to have originally been one holding, and to have been leased to Nanka Singh, from whom the defendants are descended, under one and the same agreement; and the terms of the lease and the tenure of the land are the same in all.

The first Court, in determining the suit now before us in this appeal (Heera Singh and Gokul Singh, plaintiffs), found that, in a former suit instituted against the defendants in 1849, by Baboo Ram Raj Singh and others (from whom the plaintiffs are descended), for the recovery of arrears of rent of the holding now in dispute, the defendants had clearly asserted an adverse title under the lease which they then declared to be an istimrari tenure, and, holding thence that the suit was barred by limitation, dismissed the claim.

In the two other suits (Ram Lochun and others, plaintiffs, No. 573, and Naipal Singh and others, plaintiffs, No. 577, also now before us on the appeal of the defendants), the Munsiff held that the same bar of limitation did not apply, inasmuch as the interests of the several plaintiffs were distinct, and the result of the former suit (of 1849) and the adverse title then set up by the defendants could not affect the rights of others not parties to that suit; and on the merits, finding that the defendants had failed to prove the

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istimrari character of their tenure, he decreed the claim.

The lower Appellate Court, to which the plaintiffs appealed against the first Court's order dismissing their claim in this suit, and the defendants appealed against the judgment in the other two cases decreeing the claim, took up the three cases together.

The Subordinate Judge found that the subject-matter in dispute was the same in all; that the issue was on the same question, touching the conditions of the same lease, and regarding land forming different portions of the same holding; and he held, therefore, that the judgment of the first Court, dismissing the suit in one case and decreeing it in the others, was inconsistent. He overruled the finding in this suit on the question of limitation, and, agreeing in the finding as to the tenancy being from year to year only and determinable at will, reversed the decision in this case, and, dismissing the defendant's appeals in the other cases, decreed the claim in all three suits in the plaintiff's favour.

We observe that this decision is based entirely upon the principles laid down in certain judgments of the late Sudr Courts of the North-Western Provinces, and cited as precedents—No. 66 of 1865 (North-Western Provinces), dated 27th October 1865, Gur Dyal Singh, plaintiff, appellant, Padan Singh and others, defendants, respondents, and No. 199 of 1862, dated 11th May 1863, Rajah Tikam Singh, defendant, appellant, Hurlal, plaintiff, respondent; No. 51 of 1852 of the Calcutta Court, dated 25th July 1853, Musumat Amir-un-Nissa, defendant, appellant, Maharajah Het Narayan Singh, plaintiff, respondent, namely, that "the mere fact of lessees having "been in possession for many years, and of their "having been succeeded in the tenure by their "heirs, does not prove the lease to have been "granted in perpetuity," and "that even an "'istimrari mukarrari patta' does not convey any "hereditary right unless such terms as 'ba farzandan' or 'naslan bad naslan' are contained in "the body of the deed." Special stress is laid upon the necessity of such terms being *specifically* employed in order to establish the character of a lease in perpetuity and create an hereditary right in the lessee, and it is upon the absence of such terms from the agreement made originally between the parties in the present instance that the judgment mainly, indeed entirely, turns.

We cannot uphold this judgment.

It has been held by a decision of the Privy Council of 18th January 1869, in the case of Rajah Suttosurrun Ghosal *v.* Mohesh Chunder Mitter, which reiterates the principle already laid down in a former case of Baboo Gopal Lal Thakoor *v.* Teluck Chunder Rai and must be regarded as superseding the rulings relied on by the lower Appellate Court, that "where, by an old puttah, "lands forming part of a zemindary had been "leased at a specified rent, but there were no "words in the puttah importing the hereditary "and istimrari character of the tenure, the absence "of such words was supplied by evidence of long "and uninterrupted enjoyment, and of the descent "of the tenure from father to son, whence that "hereditary and istimrari character might be "presumed."

The present case is, we consider, precisely one of those to which this ruling applies.

We are of opinion that the whole circumstances shown in the evidence in the case furnish the very strongest presumption of the hereditary and istimrari character of the tenure under which the defendants originally took, and have since held, the land now in dispute, and that the plaintiffs have altogether failed to establish the right which they claim to eject the defendants.

It is true that the lease under which the holding was created has not been produced, and neither the precise terms nor the date of the grant actually made to the ancestors of the defendants have been put in proof; but it is shown that the whole of the lands now in dispute in the several suits under consideration between the parties originally formed one holding, which was given under one lease, some generations back, by the ancestors of the plaintiffs to the defendants' ancestors; that not only have the interests of the descendants of the original lessor been separated and divided, but the lands of the original holding have been sub-divided amongst the descendants of the first lessee, and have descended by inheritance from father to son in regular succession, through two and three generations, and from them to the defendants, and this has been with the full knowledge and consent of the plaintiffs and their predecessors, who have regularly received from the several defendants the proportionate share of the rent originally fixed upon the holding according to the share of their own interests in it, and the share of the holding severally in the defendants' occupation.

We hold, then, that the presumption is altogether in favour of the defendants' allegation that the tenure was of a perpetual hereditary character, and that, to rebut the evidence afforded by the long uninterrupted enjoyment and the descent of the tenure from father to son, it lay upon the plaintiffs to bring proof in support of their assertion that the holding was only from year to year, and determinable at will. This they have failed to do, and we consider that they have shown no title to come into Court to eject the defendants from the holding, and are not entitled to the decree which they have obtained from the lower Appellate Court.

We, therefore, decree the appeal, and, reversing the decision of the lower Appellate Court, dismiss the plaintiffs' claim with costs, and interest at six per cent.—*16th August* 1870.—*Idem.*

HER MAJESTY'S PRIVY COUNCIL.

[BENGAL CASE.]

Service jaghire in a zemindary—Tenure on the condition of a particular service—Right to resume.

Where A, the owner of the zemindary right, sought to resume from B certain lands which had been originally granted for the service of preventing the ravages of wild elephants in the zemindary, and A contended that, as B's tenure was only created subsequent to the permanent settlement,

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he was entitled to set it aside under Act I of 1845—

HELD *that B's claim was founded on an earlier grant sixteen years before the permanent settlement, by which an hereditary jaghire tenure had been granted to those from whom B claimed; that, in every case, the right to resume must depend upon the nature of the particular tenure, or the terms of the particular grant; and that there was a clear distinction between the grant of an estate burdened with a certain service, and the grant of an office the performance of whose duties are remunerated by the use of certain lands.*

In this case the grant may be said to have been made pro servitiis impensis et impendendis—*partly as a reward for past, partly as an inducement for future, services; and, upon a true construction of the grant, though the grantee is still bound to protect the pergunnah from the incursions of wild elephants, should such incursions be renewed, he was not liable to have the grant resumed, because there is no longer any occasion for the performance of this particular service, there being now no fear of the depredations of these wild elephants.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Alexander John Forbes *v.* Meer Mahomed Tuquee and others, from the High Court of Judicature at Fort William in Bengal, delivered 26th July 1870.

Present:

LORD CAIRNS.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

THE appellant is the owner of the zemindary right in Pergunnah Sultanpore, and Taluka Remac, in Zillah Purneah. These méhals were purchased by him in April 1851 from one Pertaub Singh, who, on the 24th July 1850, had purchased the estate, of which they then formed part, at a sale for arrears of Government revenue; and the estate so purchased by Pertaub Singh had once been part of a far more extensive zemindary, which in 1802 was first permanently settled with one Ranee Indrawatee.

In July 1862 the appellant commenced the suit which has given rise to this appeal, in which he claimed against the respondents, first, the right to resume 9,000 beegahs of land held by them upon the tenure, which will be afterwards considered; and, secondly, the right to recover from them 2,000 beegahs of land described as towfeer, or excess, being lands which he alleged they had wrongfully acquired under colour of their tenure by gradual encroachment or otherwise.

The Court of first instance allowed the first of these claims, but rejected the second. On appeal and cross appeal the High Court of Calcutta rejected both claims, reversing the decree of the Court below on the first, and affirming it on the second, and dismissed the suit. This appeal again raises both questions.

The claim of towfeer may be shortly disposed of. It was very faintly pressed at the Bar. Mr. Leith, it is true, relied upon a passage in the Ameen's report at page 73 of the record; but the Principal Sudr Ameen was of opinion that, on the Ameen's report taken as a whole, no excess of land was shown to be in the respondent's possession; but that, on the contrary, they appeared to hold less than 9,000 beegahs in all. The High Court has confirmed that decision, and no grounds have been laid before their lordships which would justify them in disturbing the concurrent finding of the two Indian Courts on what is, in fact, a mere question of boundary and measurement.

In dealing with the question of resumption, their lordships desire to state, in the first place, the conclusion to which they have come touching the origin and duration of the tenure on which the lands sought to be resumed are held.

The following is its history. In 1775 the lands in question were granted by the sunnud, at page 100 of the record, to Meer Synd Ally, a Persian, who had done, and was doing, good service in repressing or preventing the incursion of wild elephants coming from the Morungs or Terai upon the cultivated lands of Pergunnah Sultanpore. This first sunnud contained no words of inheritance. In 1786, the Meer, being then dead, the Government granted the second sunnud in favour of Meer Abdool Hossein Khan and Meer Ally Rezza, who represented themselves to be the elder brother and nephew of Meer Synd Ally, and, as such, his heirs. This sunnud does contain words of inheritance, and made the grantees and their descendants fixed jaghiredars. It is not shown what, if any, interruption of possession took place between the death of Meer Synd Ally and the date of this second sunnud. In February 1804, Mirza Mahomed Saduk Goolstana and others brought a suit against Meer Ally Rezza and the widow of Meer Abdool Hossein, alleging that they were the true heirs of Meer Synd Ally, and that the grantees under the second sunnud had falsely pretended to be his brother and nephew. The first decree in this suit declared the plaintiffs to be the true heirs of Meer Synd Ally, and directed the defendants to relinquish the possession and enjoyment of the

jaghire to them, treating apparently the former as trustees for the true heirs. On appeal the Provincial Court affirmed this decree and dismissed the appeal. But, considering apparently that it could not, without the sanction of Government, transfer the benefit of the second sunnud from the persons named in it to the true heirs of Meer Syud Ally, it directed that the possession of the former should remain undisturbed "until an order should be issued from head quarters," meaning the Governor-General in Council.

In consequence of these decisions the third sunnud was granted on the 10th January 1807. It recited the two former sunnuds, and that by the decrees in the last-mentioned suit the heirship of the plaintiffs had been proved, and the said jaghire continued to the plaintiffs. And it went on to state that, under these circumstances, the Government had, on the application of Meer Mahomed Saduk, confirmed the said jaghire lands to the plaintiffs, from whom the present respondents derive their title.

Under the three sunnuds the lands comprised in the jaghire have been held rent-free for nearly a century.

One of the questions raised in the suit is, however, that, under the circumstances above stated, the title of the respondents must be held to have been first created by the third sunnud in 1807; and that, inasmuch as the zemindary, of which Sultanpore was then part, was permanently settled in 1802, the appellant, who claims through an auction purchaser, is entitled, under Act I of 1845, to set aside the tenure as one created within his zemindary since the perpetual settlement.

Their lordships are of opinion that this contention cannot be supported. It is perfectly clear that the effect of the second sunnud was to create sixteen years before the settlement of the estate in 1802 an hereditary jaghire tenure, and that the settlement was made upon the assumption of the subsistence of that hereditary jaghire. The grant was perfectly good against the zemindar, who could not have come into Court to set aside the second sunnud on the ground that the grantees had obtained it from Government by fraud or misrepresentation. Nor, in fact, has any Court, or any authority, ever revoked or set aside that second sunnud. The decrees in the suit between the real and pretended heirs of Meer Syud Ally made (subject to the sanction of Government) the latter trustees for the former, and directed them to relinquish the enjoyment of the lands accordingly. And the Government by the third sunnud sanctioned that arrangement and confirmed the title of the true heirs. On this view of the transaction the action of Government and the inaction of the zemindar in 1807 become intelligible. For it is not to be presumed that the Government would have assumed the power of granting a new tenure in a settled zemindary, or that the zemindar would have submitted to such an invasion of his rights. Their lordships, therefore, concurring on this point with the High Court of Calcutta, are of opinion that the jaghire of the respondents must be held to be a tenure created before, and subsisting at the time of, the decennial settlement, and consequently that it is within the exception of the 26th Section of Act I of 1845; whether the appellant has, or has not, in respect of his estate, the powers of an auction purchaser under that Act, (as to which their lordships express no opinion); and whether the lands comprised in it were, or were not, part of the zemindary settled in 1802.

Has, then, the appellant established his right to resume the lands comprised in this ancient jaghire. His case is that they are within the limits of the zemindary settled in 1802; that as between the Government and the zemindar, they were then treated as mâl or revenue-paying lands, and a revenue assessed upon them, although they were then, and have ever since been, held rent-free as between the zemindars and the jaghiredars; that, under these circumstances, they must be deemed to be chakeran or service lands, and that the services on which they were held, being no longer required or performed, the right of the zemindar to resume them has accrued.

Some attempt has been made, on the part of the respondents, to show that the lands comprised in the jaghire are not even within the geographical limits of the settled zemindary, or, at least, have not been proved to be so. But, looking at the pleadings and the evidence, their lordships are of opinion that upon this point the appellant has established his case. He has given strong *primâ facie* proof of the fact, and there is no evidence at all to the contrary.

If this be so, the next question is, How were the lands dealt with on the occasion of the settlement? They were then unquestionably held rent-free under a subsisting sunnud, and the presumption is that they would be treated as lakhiraj. In that case no revenue would be assessed upon them. Nor would the zemindar acquire any right to question the validity of the title on which lakhiraj land of that extent was held. That question could only be raised by Government, and, having been decided adversely to Government in 1845, the title of the respondents would now be indefeasible.

On the other hand, it seems to follow that, if, on the occasion of the settlement, revenue was assessed on these particular lands as between the Government and the zemindar, they must, since they produced no money-rent payable to the zemindar, have been treated as in the nature of chakeran lands within the meaning of the 41st Section of Regulation VIII of 1793, upon the notion that the services to be performed by the tenant were equivalent to rent payable to the zemindar. It is, therefore, a

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very material issue whether, in point of fact, these lands were, on the occasion of the settlement, treated as part of the mâl assets of the zemindary.

Their lordships are not prepared to say that the appellant has established the affirmative of this issue beyond reasonable doubt.

He relies mainly on the evidence afforded by the quinquennial register, and the proceedings in the resumption suit brought by Government against the respondents, or those through whom they claim, which was finally determined in 1848.

Their lordships do not concur with the High Court in thinking that the first of these documents has not been properly authenticated. The learned Judges of that Court seem to have confined their attention to the extract at page 92 of the record, and to have taken no notice of the fuller document at page 122, which not only bears the Collector's seal, but is shown by the endorsements upon it to have been the identical paper produced by the jaghiredars in the resumption suit. The appellant's case is that the lands in dispute are included in the villages Taluka Ramgunge, and Mouzah Gurka, part of Taluka Remae, on which a revenue of 850 Rupees appear to have been assessed.

Their lordships cannot assent to the proposition of the learned counsel for the respondents that Taluka Remae is something different from Pergunnah Sultanpore, and that the appellant is bound to show that the lands in question are mâl lands within Sultanpore Proper. They think it is proved that Taluka Remae was part of Pergunnah Sultanpore in the larger sense of that denomination. Nevertheless, if the appellant's case depended solely on the quinquennial register, their lordships would doubt whether it had been sufficiently proved that the lands in question were subject to the assessment. For, even if it be assumed that the different villages or divisions of land mentioned in the chuckbund and Ameen's report are comprehended within the denominations of Taluka Ramgunge and Gurka, it seems consistent with that register that those mouzahs may have included the 9,000 rent-free beegahs in excess of the 5,819 beegahs mentioned in it as the lands in respect of which the revenue of 815 Rupees was assessed. But it is argued that the identity of the jaghire lands with the mâl lands in Taluka Ramgunge, &c., has been admitted by the respondents, or those through whom they claim in the resumption suit. The question, then, arises, what is the weight to be given to that admission?

Their lordships cannot agree with the learned judges of the High Court in treating it as a mere admission or argument at the Bar by a mookhtear whose authority to make it is not proved. It seems to them to be the foundation and substance of at least one of the defences deliberately pleaded by the jaghiredars in the resumption suit to the claim of Government. It was not the sole defence, nor can the ultimate decision of the case be said to proceed upon a finding by the Collector that the lands were mâl and not lakhiraj. For he seems to have held that the proof of the sunnud was of itself a bar to the claim of Government in that proceeding. Nevertheless, the admission appears, to their lordships, to be one of a grave character; and, though it is not to be treated as an estoppel, it at least casts upon the respondents the burthen of explaining it, and of showing that what was then deliberately asserted was not the fact. The onus, then, of showing that the jaghire lands are something distinct from the mâl lands of Taluka Ramgunge and Goorka, is shifted upon them. And this fact they have not attempted to establish by direct evidence. They have been content to rest on the alleged insufficiency of the proof on the other side. Their lordships, therefore, are constrained to say that, though the evidence before them is not conclusive, the preponderance of it is in favour of the allegation that the jaghire lands were made the subject of assessment in the settlement between the zemindar and the Government in 1802.

But is it a necessary consequence of this finding that the appellant is entitled to resume these jaghire lands? His right to do so must depend on the nature of the tenure; and it is worthy of observation that so little value did the zemindar in possession between the years 1835 and 1845 attach to this supposed right of resumption, that he did not intervene, as undoubtedly he might have intervened, to resist the then claims of Government.

The settlement between Government and the zemindar cannot affect the rights of the jaghiredars. The lands held on this tenure, even if then treated as in the nature of chackeran lands, differ widely from the ordinary chackeran lands contemplated by Section 41 of Regulation VIII of 1793. They seem hardly to fall within the description of "lands held by a public officer or a private servant in lieu of wages." Neither Meer Syed Ally nor his descendants were by the sunnuds appointed to an office known as "elephant hunter for the Pergunnah," or by any like description. Still less ground is there for saying that they were the private servants of the zemindar. Their right, whatever it be, was derived, not from any zemindar, but from the supreme authority in the State.

Their lordships have carefully considered the various authorities cited at the Bar, but they can find none which expressly govern the case.

Of those which have been decided by this Committee, it is sufficient to say that in the Madras Case, in 7 Moore, I. A., p. 128, the question really discussed and decided was whether the tenure in question was inam or amaram, it being established and almost admitted that, if it were the latter, it was

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resumable at pleasure; and the case in the 10th Moore, I. A., p. 16, decided that lands held in lieu of remuneration by a village Chowkeedar, though unquestionably chackeran within the meaning of Regulation VIII of 1793, Section 41, were not resumable at the pleasure of the zemindar, if the public, or the Government representing the public, had an interest in the appointment of the chowkeedar.

The Indian authorities are not quite consistent with each other; but, taken altogether, they do not appear to their lordships to establish the right for which the appellant contends in this case.

In the case of the 11th May 1857, the chackeran lands had been assigned for the maintenance of a chowkeedar, and the existing chowkeedar had no connexion with them, being otherwise remunerated. Other provision had, therefore, been made for the service to be rendered in return for them.

In the case of the 30th November 1857 the tenant whose services had been dispensed with, or had otherwise ceased, was clearly the mere private servant of the Maharajah (the zemindar). He was the person bound to perform all the leather work required in the family.

The case of the 11th December 1857 was one of ghatwalee tenure, and one of the learned Judges who decided it (Mr. Justice Trevor), in the subsequent case decided by him and Mr. Justice Campbell, 3 Weekly Reporter, p. 87, and again in the case decided by the Full Bench, 6 Weekly Reporter, p. 203, concurred in the ruling that all that was laid down in the first-mentioned case, beyond the decision that the zemindar was entitled to resume, when the ghatwal had actually failed to render the service which he was bound to render, was mere *obiter dictum.* Both these cases in the Weekly Reporter support the contention of the respondents rather than that of the appellant. Both also relate to ghatwallee tenures. The case decided in 1868, 1 Bengal Law Report, p. 120, is to the effect that, the Government having concurred in the suppression of the office, the son of a ghatwal, who had held his office, not by hereditary right, but on the appointment of the zemindar (though practically the son had continually been appointed in succession to the father), could not successfully sue to recover lands which the zemindar had resumed.

Their lordships do not think it necessary, for the determination of this case, to examine minutely these decisions touching the ghatwalee tenures. And they abstain the more willingly from doing so since it was stated at the Bar that some of them are likely to be brought regularly before this Board by appeal. But they cannot but express their concurrence in many of the general principles laid down by the Chief Justice in the case in the 6th volume of the Weekly Reporter.

Another case cited is that at page 84 of the Sudr Dewanny Udalut Decisions for 1858. The property, as in this case, was a jaghire. The decision did no more than remand the case for re-trial, with the following intimation of opinion, "The issue raised by the plaintiff is not solely whether the grant to the ancestor of the defendant is hereditary, but also whether it has any condition of service annexed to it or not, and, if it has, whether that service be still performed; should a condition of service be annexed to the grant, the hereditary nature of the grant will not be the test of its present validity, but the performance of the required service; and, if this service be not performed then, notwithstanding its hereditary nature, the tenure will be liable to resumption."

To this ruling, if it be understood to mean only, that where the continued performance of certain services is upon the true construction of the grant, the condition on which the lands are to be held, their lordships conceive no exception can be taken. But if it means, that whenever service enters into the motive or consideration for a grant, the grant will become void if for any reason the service ceases to be performed, their lordships think that the proposition is far too wide.

The conclusion which they would draw from the decided cases, as well as from the reason of the thing, is that in every case the right to resume must depend, in a great measure, upon the nature of the particular tenure, or the terms of the particular grant.

They agree with the observation of Mr. Justice Jackson, 6 Weekly Reporter, page 209, that there is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office, the performance of whose duties are remunerated by the use of certain lands.

They have already stated that, in their opinion, the grant in question does not fall within the latter category.

Assuming it to be a grant of the former kind, their lordships do not dispute that it might have been so expressed, as to make the continued performance of the services a condition to the continuance of the tenure. But in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express words, declare that, the service ceasing, the tenure should determine.

It appears to their lordships that neither the first nor the second sunnud is a grant of the kind last mentioned. Each proceeds in part upon the past services of Meer Syud Ally; nor is the consideration so far as it is unexecuted wholly the keeping up of a body of men to repel the incursions of the elephants, for the grantees are also to cultivate the waste land. The latter stipulation was probably designed

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to protect the already-cultivated districts of Sultanpore by interposing a further belt of cultivation between them and the forest. Hence the grant may be said to have been made *pro servitiis impensis et impendendis*—partly as a reward for past, partly as an inducement for future, services. Again, neither sunnud contains any words which expressly import that the tenure shall cease if, and when, any of the services cease to be performed. Such a provision is something very different from one which merely casts upon the grantee the performance of certain duties so long as they are necessary. The former makes the grant determinable when there is no further occasion for the services. But, in the latter case, if the operation of any natural cause (as, *e. g.*, the progress of cultivation which has caused the wild elephants to cease out of the land) removes the necessity for the services, the grantee will hold the lands practically freed from the condition originally imposed upon him. Their lordships are, therefore, of opinion that, upon the true construction of these sunnuds, the grantees, though bound to protect the pergunnah from the incursions of wild elephants so long as those incursions lasted; and, though still bound to do so, should, by any chance those incursions be renewed, and though they may be liable to forfeit the tenure, if they wilfully fail in the performance of this duty, are not liable to have their lands resumed, because there is no longer any occasion for the performance of this particular service, "there being now no fear of the depredations of elephants in those places."

Had this been a grant reserving to the zemindar a small money-rent, as well as the services, (if, indeed, the latter are reserved to the zemindar,) their lordships would have had no doubt upon the case. But it seems to them that the unexplained anomaly of making mâl lands rent-free in the hands of the jaghiredars does not affect the construction of the sunnud or the rights of the parties.

It emphatically lays upon the appellant, who is seeking to dispossess or to rack-rent the respondents, who by themselves or their ancestors have brought these lands into cultivation, and enjoyed them for so long a period; who must have been permitted by former zemindars to continue undisturbed in such enjoyment long after the incursion of wild elephants had become mere matter of tradition, to make out a clear title to resumption. In their lordships' opinion he has failed to do so, and, therefore, though they dissent from the particular grounds on which the High Court has dismissed the suit, they think its dismissal was right, and ought to be affirmed. They will, therefore, humbly advise Her Majesty to dismiss this appeal with costs.

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

STRATTON AND HARRIS, J. J.

Zemindary village—Grant under puttah—alienation binding.

A sued B for the recovery of a zemindary village which he alleged had been only granted in lieu of wages for service. B contended that the village was held under a surva moccassa puttah. A disputed this contention—first, because the division, of which the village formed a part, was then under attachment; and second, because, according to the terms under which the zemindary was held, the village could not be alienated—

HELD *that the alleged attachment had been, or was about to be, released at the time mentioned; and that the clear and obvious intent of the restriction in question, as well as of the corresponding legislative enactments, was to defeat improper alienations to the prejudice of the rights of Government, or of the successor of the estate.*

In accordance with these principles, B was declared to be entitled to hold the village under the puttah executed to his father.

No. 6 *of* 1821.

Rajah Rao Vencata Neeladry Rao *v.* Rajah Enoogunty Sooriah.

RAJAH RAO VENCATA NEELADRY RAO, Zemindar of Pittapore, sued Rajah Enoogunty Sooriah, in the Provincial Court for the Northern Division, to recover possession of the village of Gorasa, forming part of his zemindary, and also for the recovery of the sum of Rupees 8,133-2-0, being the amount of collections from the village in the years Bapoodania and Pramadee, or 1818 and 1819.

The suit was filed on the 14th January 1820, and the Provincial Court, by decree dated the 28th March 1821, adjudged restoration of the village to the plaintiff, and payment of Madras Pagodas 1,042, or Rupees 4,011-11-2, being the value of the produce thereof for the year Pramadee. The claim for the produce of the year Bapoodania was disallowed, and the parties were adjudged to pay their respective proportions of costs, namely, the plaintiff Rupees 266-7-2, and the defendant Rupees 886-9-9.

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From this decision Rajah Enooguntу Sooriah appealed to the Court of Sudr Udalut by petition dated the 13th June and admitted on the 18th July 1821, and the special grounds of appeal, and the answer of the respondent, have been heard and filed on record.

Referring to the pleadings filed in the Provincial Court, it appears that the plaintiff rested his title to resume the village in dispute, on the ground that it was originally granted by him in the year Radrodgaree (1804) to the defendant's elder brother Nursiah, and afterwards to the defendant, Rajah Enooguntу Sooriah. The defendant, on the other hand, claimed the right to hold the village as a surva mocassa under a puttah alleged to have been executed by the plaintiff to his (the defendant's) father, Chinniah, on the 3rd August 1800, accompanied by a dimmut addressed to the caupoos and curnums of the village. The plaintiff denied the execution of these two instruments, and he inferred the impossibility of their having been granted from the fact that, at the time of their alleged execution, the Carapah Mootah, in which Gorasa is situated, was under attachment for arrears of revenue. He further contended that, under the terms of the cowle granted by Government assigning the zemindary in lease to him for eight years, from 12th July 1795 to 11th July 1803, and under the conditions of the sunnud-i-milkeut-i-istimrar granted to him on the 6th May 1803, as well as under the provisions of Section 12, Regulation XXV of 1802, he was incompetent to alienate the village by assigning it as a surva mocassa.

Although it was in the highest degree material to the support of the plaintiff's case to prove that he granted the village in 1804 to the defendant's elder brother Paupiah in lieu of wages for service, and that he continued it for the same purpose to Nursiah and afterwards to the defendant, he did not attempt to produce any evidence whatever, either parol or documentary, to this point. If this point had been satisfactorily established, it would have afforded the strongest presumption against the execution of the puttah, on which the defendant founded his title to hold possession of the village, and would have successfully rebutted the evidence adduced by the defendant, to prove the actual execution of that instrument. It is not easy to account for the plaintiff's total abandonment of this material part of his case otherwise than by the supposition that he knew the plea to be unfounded in fact. His admission that the defendant's family held the uninterrupted possession of the village from 1804 to 1818, without proving that the tenure of such possession was consistent with his right of resumption, operates very strongly to corroborate the effect of the positive evidence produced by the defendant to prove the execution of the deed to his father Chinniah, and a very natural motive for the grant is to be found in the plaintiff's marriage to Chinniah's daughter. The inference attempted to be drawn from the alleged fact that, at the time of the execution of the deed, the Carapah Mootah was under attachment for arrears of revenue, is obviously groundless; for, according to the plaintiff's own showing, the attachment had then been, or was about to be, released. The Court, therefore, have no doubt whatever that the plaintiff executed to Chinniah the puttah marked No. 37; and the remaining point for consideration is the legal validity of this grant, with reference to the conditions of the cowle, under which, at the time the grant was made, the zemindary of Pittapore was held by the plaintiff. By that cowle, the plaintiff was restricted from making alienation of every description during the period of his lease, and the Provincial Court, on the ground of this restriction, considered the plaintiff incompetent to make the grant, and they adjudged it to be illegal and invalid under the provisions of Regulation XXXI of 1802.

The plain intention of the restriction imposed on the plaintiff by the cowle No. 19 was to protect the interests of Government in the zemindary, and to prevent its resources from being impaired, while the plaintiff should hold the lease. It went no further than to declare that the Government would not recognize alienations of any description made during the lease, unless their consent should previously be had and obtained. A similar restriction in the permanent cowle afterwards granted to the plaintiff had the like object, but more extended in its effect, inasmuch as it went to secure the descent of the zemindary in perpetuity to the heirs and successors of the original grantee without unauthorized incumbrances by any of the holders, and the provisions of Regulation XXV of 1802 are confirmatory of the restitution. Section 8 provides for the payment of the public assessment on all separated portions of a zemindary by the grantee, if the transfer be regularly made, and, if otherwise, by the grantee; and, as a protection to the heirs, the validity of the transfer is made to depend upon its being conformable to the law of the parties and the Regulations of the Government. And by Section 12 Zemindars are declared absolutely incompetent, without the previous consent of Government, to make any appropriations intended for the purpose of effecting a permanent reduction of the public assessment on their zemindaries.

The clear and obvious intent of the restriction in question as well as of the corresponding legislative enactments being to defeat improper alienations to the prejudice of the rights of Government or of the successor to the estate, it follows, by a common rule of construction, that such alienations are voidable on the determination of the interest of the person who makes them. Thus, if the interest of Rajah Rao

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Vencata Neeladry Rao had ceased on the termination of the eight years' lease and the zemindary had been assigned to another, or if, pending that lease, the zemindary had been attached for non-payment of the stipulated kists, in the first case the grant to Chinniah would have been voided, and, in the second case, it would cease to have effect so long as the attachment should last. But, if the restriction is made to operate more largely and is construed to render the grant absolutely null and void, it would be carried beyond the object for which it was intended. It must be observed that the plaintiff's interest has suffered no interruption since the date of the grant to Chinniah, for, before the termination of the eight years' lease, the zemindary was granted to him in perpetuity.

The Provincial Court have alluded, in their decree, to the principle of decision in Case No. 11 of 1804 on their file, or Appeal No. 1 of 1804 on the file of this Court. There can be no doubt that the judgment in that case was substantially correct, inasmuch as it went to set aside a grant similar to the present, the continuance of which was claimed from the successor of the original grantor. On the principle stated above, the grant to the plaintiff in that case was clearly voidable, when the interest of the defendant's predecessor terminated by death or otherwise. But, on referring to the proceedings of the Sudr Court in that case, it cannot escape observation, that the real point for decision was mistaken or overlooked; and the Court would seem to have considered the question at issue to be the right of alienation, as between the Government and the Zemindar, at the time when the grant was made, namely, in the years 1794-5. Hence arose the reference to the provisions of Regulation XXXI of 1802, as the grounds of the decree which is filed among the exhibits of the present plaintiff; but those provisions were altogether inapplicable to the real point at issue between the parties, which was, whether the defendant was bound to continue a grant made by his predecessor, who held only a temporary and restricted interest in the estate, from which the grant was made. These observations have been considered necessary for the purpose of preventing the improper application of the Sudr Court's decree in Appeal No. 1 of 1804, as a precedent for the decision of cases similar to the present.

For the reasons above stated, the Court, setting aside the decree of the Provincial Court, do adjudge that the appellant, Rajah Enoogunty Sooriah, is entitled to hold possession of the village of Gorasa, under the puttah executed to his father by the respondent, Rajah Rao Vencata Neeladry Rao, on the 3rd August 1800, subject to the operation of the general principles stated above, and they order the restoration of the village to the said appellant, together with the mesne profits thereof, from the date on which the respondent aforesaid obtained possession under the decree of the Provincial Court.

The Court further adjudge that the respondent do pay all costs in the Provincial Court and in this Court.

HARRIS AND GOWAN, J. J.

Malabar sovereignties — Acquisition of province — Claims to compensation, or malikana.

C. R. sued five respondents for the recovery of money, lands, and superiorities, due to him as Colatery Rajah in Malabar. C. R.'s ancestors were the chief Rajahs under a sort of feudal system according to which the ancient kingdom of Malabar was administered and divided, the respondents being the representatives of the four junior Rajahs under that system. During Hyder's invasion of Malabar, C. R.'s ancestors fled to Travancore, and the elder of the inferior Rajahs was left in charge of the Government. On the cession of the country to the English by Tippoo, the inferior Rajah left in charge appropriated to himself the compensation given by the English Government, which ought to have gone to A's ancestors. The first respondent alleged that all the branches of the family held their lands in their own right, and that he had properly received the compensation granted by the English—

HELD *that, whatever might have been the ancient rights of C. R. and his ancestors, they had been abrogated by the conquest of Malabar by Hyder and its cession to the British by Tippoo; and that the first respondent was the representative of the Rajah, to whom the Government had assigned the territory in question in fief, and subsequently (in exchange) the compensation or malikana allowance, in token of amity and in consideration of his friendly alliance during the war with Tippoo.*

No. 9 *of* 1821.

Colatery Rajah, of Colutnaad, *v.* Cherikal Ravee Vurma Rajah and four others.

THE appellant, on the 15th July 1816, sued for the recovery of Rupees 16,221-3-50, and certain lands and superiorities, from the first respondent, and against all five respondents, to be acknowledged by them as the lawful successor and person legally entitled to the puttenrunda or malikana allowance, and the immunities attached to the rank of Colatery Rajah.

The Provincial Court for the Western Division, on 2nd June 1819, passed an order dismissing the suit, with full costs, against the appellant, under Section 10, and Clause 4, Section 18, Regulation II of 1802, on the grounds that a former decree had been passed upon the subject of the claim, which

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had been adhered to for a period exceeding twelve years. From this order, the appellant, on 2nd December 1819, preferred a summary appeal to the Court of Sudr Udalut, who, on the 6th April 1820, instructed the Provincial Court to revive and determine the suit on its merits.

The Provincial Court having accordingly investigated the case, passed a decree, on the 30th June 1820, dismissing the claim, with additional costs to those adjudged by their previous order. The appellant, being dissatisfied with this decision, presented a petition of appeal therefrom, on the 29th January 1821, which, together with the answer of the first respondent, have been heard and filed on record.

The appellant is a member of the family of the Odeamungalum Koulghum or house, and, being the senior male in age of that Koulghum and of the Polly Koulghum, succeeded to the rank of the first or Colatery Rajah, in the month of Khany, year 990, corresponding with September 1814, on the death of the late Colatery Rajah.

The five respondents are members of the Polly Koulghum, which, at present, consists of the five following separate branches, the first respondent being the chief of the Cherikal Koulghum; the second respondent being the chief of the Tevanangate Koulghum, to which she succeeded on the death of the Tekellungoor Rajah, who died subsequent to the institution of this cause, and who was one of the original defendants; the third respondent being chief of the Chengue Koulghum; the fourth respondent being chief of the Pudinjar Koulghum; and the fifth respondent being chief of the Kawanisberry Koulghum.

The appellant, in his several pleadings, explains the nature and constitution of the ancient kingdoms of Colutnaad or Kolla Soroovum, over which, according to the laws of succession to that sovereignty, he has become the chief Rajah, and in virtue of which he founds the present claim.

He states that a former sovereign of Keroola or Malabar, named Cheroomem Peroomal, divided this empire into four kingdoms or soroovums, and established similar rules of succession for the Rajah of each soroovum. The four kingdoms are as follow: the Kolla Soroovum, constituting that in dispute; the Tripa Soroovum, constituting the present kingdom of Travancore; the Neddierappa Soroovum, constituting the kingdom of the ancient Zamorin Rajah of Calicut; and the Parambodeppa Soroovum, which is conjectured to constitute the kingdom of the Cochin Rajah.

He then explains that over the Kolla Soroovum one senior and four junior Rajahs were appointed in order of succession for the government of the kingdom, and that these Rajahs must belong to the families of the Odeamungalum and Polly Koulghums, including the Poothoowilly Koulghum, a separate branch of the latter. These five Rajahs are stated to be the senior males of the above koulghums, the oldest being the Colatery Rajah, the second being the Tekellangoor Rajah, the third being the Wuddukulungoor Rajah, the fourth being the Nalumkoor Rajah, and the fifth the Aujumkoor Rajah. And it is described that the oldest female of these respective koulghums was accustomed to some distinction, and entitled to the station and dignities annexed to the Achumma Moopastanum.

The pleadings state that the Rajahs above described, on succeeding to their respective stations, were placed in possession of palaces and territory; but it would appear that, with the exception of what the first respondent enjoys, none of this property remains, it having been wrested from the Kolla Soroovum by other Rajahs or Chiefs, and retained by them until the cession of the Province of Malabar to the English on 18th March 1792.

It has been shown above that the Colatery Rajahs must be of the families of the Polly Koulghum and the Odeamungalum Koulghum, which appear to have been originally united as one koulghum, but subsequently separated, though at what period, is not disclosed.

The Polly Koulghum was also formerly united with its separated branch of the Poothoowilly Koulghum; but no explanation is afforded of the date of division, and no reasons are given for excluding this branch from the suit; for its recognition of the appellant's right is equally necessary with the remaining members of the family. The record does not explain where the possessions of this branch of the Polly Koulghum are situated, or what they consist of. The designation of the remaining five branches of the Polly Koulghum have already been described, so that it appears seven petty Rajahs are now eligible to the progressive rotation of the five superior Rajahs.

The appellant and respondents were required to file lists of the Colatery Rajahs who had resigned since 913 or 1737-8; but the appellant alone produced a list which the Court consider correct, from the circumstance of the respondent omitting to file any. The following Rajahs comprise the number who have reigned until the accession of the appellant, and is descriptive of the koulghum to which each Colatery Rajah belonged, viz:—

1. Poothoowilly Kovilagata Rajah commenced his reign, or was reigning, in 913 or 1737-8.
2. Odeamungalum Kovilagata Rajah commenced his reign in 933 or 1757-8.
3. Pally Kovilagata Rajah commenced his reign in 937 or 1761-2.
4. Poothoowilly Kovilagata Rajah commenced his reign in 950 or 1774-5.
5. Chenga Kovilagata Rajah commenced his reign in 959 or 1783-4.
6. Pundinjara Kovilagata Rajah commenced his reign in 974 or 1798-9.
7. Poothoowilly Kovilagata Rajah commenced his reign in 981 or 1805-6.
8. Odeamungalum Kovilagata Rajah, the present senior Rajah, appellant, commenced his reign in the month of Khany of the Malabar year 990, or in September 1814.

The appellant states that during the commotions in the Province of Malabar, alluding to its invasion by Hyder Ally and his son, his predecessors emigrated to the kingdom of Travancore, and the ancestors of the first respondent were employed by the absent Colatery Rajahs to manage the government of the Kolla Soroovum, which they faithfully administered until the death of the first respondent's predecessor in 972 or 1797. He then states that the Chenga Colatery Rajah, who commenced his reign in 1783-4, was prevailed upon to nominate the first respondent to conduct the affairs of his government; but, soon discovering that he departed from former rules and usages, he represented his conduct to Mr. Duncan, the Governor of

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Bombay, and demanded the management of the country to be vested in his own person, when he was informed in reply that the first respondent, as the subordinate Rajah, would show him respect and obedience. The appellant then proceeds to explain that the first respondent acted deceitfully, and, under the fortunate circumstance of his predecessor being in the management of the country, when it was assumed by the Company, and of himself being in charge when the Puttenrunda or Malikana allowance was conferred in lieu of that country, that he appropriated what virtually belongs to the Colatery Rajah, and which the predecessors of the appellant have hitherto been unable to sue for in consequence of their residence being in Travancore, and not having been allowed to visit the Province of Malabar.

The appellant describes that the quota of the Puttenrunda allowance appertaining to the Colatery Rajah amounts to Rupees 9,481-1-0 a year, and that, at the institution of his suit, one year and two instalments was due, amounting to Rupees 15,221-3-50, which he claimed. He also claimed the restoration of certain lands belonging to the Colatery Rajahs described as yielding an annual rent of 39,000 dungallies of nelly, valued at 500 Rupees, and situated at certain places in Colatnaad, named Eyakate, Madakara, Kolate Wyil, and Keerara Cherkumal. Two years' arrears of rent are also demanded, or 1,000 Rupees. He further claims to recover certain pagodas and their establishments, situated in the kingdom of Cherikal, and appertaining to the ancient sovereignty of the Kolla Soroovum. These three items constitute the particular claims preferred against the first respondent individually. Against the whole five respondents the appellant demands their recognition of him as their lawful superior and entitled to the rank, emoluments, and immunities appertaining to the station of the Colatery Rajah.

The four last respondents clearly countenance and connive with the appellant in the prosecution of this claim, for they fully admit every part of the demand referring him to the first respondent for substantial redress, by the restoration of lands, pagodas with their establishments, and the Malikana allowance.

The first respondent resisted the claim altogether, and contended that, in the Malabar year 913, or 1737-8, the ancient kingdom of Colatnaad having been invaded and partially conquered by the Jkkeri Rajahs, the reigning Colatery Rajah and the junior titled Rajahs, by a written deed, assigned to the first respondent's ancestor, named Parakumkata Kypicha Odea Vurma Rajah, such part of that kingdom as had not been dismembered, and it was at the same period further agreed that each family were thenceforward to be limited to, and maintained from, the property of their respective koulghum; since which, the management of the territory, constituting the basis of this claim, has devolved upon the five following successive Rajahs of the Cherikal Koulghum, namely,

1. Parakumkata Kypicha Odea Vurma Rajah commenced his reign in 913, or 1737-8.

2. Rama Vurma Rajah commenced his reign in 921, or 1745-6.

3. Ravee Vurma Rajah commenced his reign in 934, or 1758-9.

4. Rama Vurma Rajah commenced his reign in 963, or 1787-8.

5. Ravee Vurma Rajah commenced his reign in 964, or 1788-9,

and, as their lineal descendants, he, the first respondent, succeeded the last-named Rajah on his death in 972, or 1797, to all the rights of sovereignty, exclusively and independently enjoyed by his predecessors. He further contends that during the above reigns several Colatery and other Rajahs of the four junior ranks have attained their respective dignities; but that they have always been maintained from the revenues of their individual koulghum, and never exercised any authority over his territorial possessions or pagodas.

The first respondent then explains that his immediate predecessor entered into treaties with the English Government in 965, or 1790, during the war against Tippoo Sultan, and that, after the peace, he continued in possession of his ancient kingdom, as tributary Prince, under the Company, until his death in Karkadogum, year 972, or about 30th July 1797, when he, the first respondent, succeeded to the government of Cherikal by right of inheritance, as recognized by the English Government, the reigning Colatery Rajah, the King of Travancore, and all the Rajahs and Princes in the neighbourhood of Cherikal. He further explains that, at the conclusion of the Malabar year 974, or September 1799, the Honourable English Company conferred upon him the Puttenrunda or Malikana allowance now claimed, in lieu of the government of Cherikal, which was then assumed. He describes that in the year 975 or 1799-1800, the remaining Rajahs of his family preferred a claim against him relative to the Puttenrunda allowance and other property, when Mr. Rickards, the Principal Collector of Malabar, on 6th August 1803, passed a decree adjudging half of that allowance to belong to the respondent, agreeably to the instructions of the Board of Revenue at Madras, as well as one-fifth of the Polly Koulghum landed possessions, and that all the property acquired exclusively by the Cherikal Koulghum should remain vested in that family, the remaining moiety of the Puttenrunda allowance, after deducting 500 Rupees a year for the Odeamungulum Koulghum, was adjudged to the other branches of the Polly Koulghum; and the first respondent observes that, as the Colatery Rajah, who began to reign in 974 or 1798-9, was a party to the above decree, and as the appellant's own karnavan, or hereditary predecessor, laid claim to a share of the allowance, and to the Odeamungulum Koulghum property, at the same time and on the same occasion, this claim is not cognizable under Section 10, Regulation II of 1802, and that it should be dismissed under Clause 4, Section 18, Regulation II of 1802, the date of action exceeding twelve years. In regard to the claimed lands, the first respondent contends that no Colatery Rajah ever possessed any lands in Eyakote or Kolatoor Wyil; that the lands in Madakara belong exclusively to the Cherikal Koulghum; and that the lands in Keerara Cherikal are the sole right of, and in the possessive enjoyment of, the Keerara Kshetram, the pagodas and their establishments constituting a part of the demand, as stated by the respondent, to have devolved to his family in 913, or 1737-8, and to be included in the property

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adjudged to him in the aforesaid decree, dated 6th August 1803.

The Provincial Court did not deem it requisite to examine any witnesses, considering that the public records of Government filed by the parties, and referred to in the offices of the Collector and Zillah Judge of North Malabar, afforded conclusive and ample information whereon to form a judgment; and by their decree, founded on this evidence, the claim of the appellant was a second time dismissed, as his title to the rank of Colatery Rajah, to which he had succeeded from seniority in age, is not denied or disputed, and because the decree passed by Mr. Rickards on the 6th August 1803 determined the rights of all the branches of the Cherikal family, as well to the landed possession as to the distribution of the Puttenrunda allowance, and had been acquiesced in, and conformed to, by all parties for seventeen years.

From this judgment the appellant appealed on the grounds that the Principal Collector in Malabar was incompetent to pass a decree under the existing Regulations of Government; that he (appellant) was not a party to that decree; that no Colatery Rajah, previous to himself, after the first respondent's accession to the management of the country, had been able to visit Malabar, and effectually to prosecute a claim for the recovery of the Colatery rights; and that, from the recorded proceedings, as also from the evidence ready to be produced, it is manifest that the first respondent was merely a deputy, appointed to manage the country belonging to the senior or Colatery Rajah, who commenced his reign in 959, or 1783-4.

The Court of Sudr Udalut having attentively considered the record of this case, proceed to pass judgment. The decree passed by the Principal Collector of Malabar on 6th August 1803 is indubitably a legal instrument, for at that period the judicial system pronounced by the Regulations of 1802 had not been introduced into the above province, and, by the provisions of Section 47, Regulation II of 1803, passed on the 1st January of that year, Collectors were declared to be vested with judicial powers in those districts whereto the judicial system did not extend. But it is nowhere shown, either in the body of the above decree marked E. or in other proceedings, that the appellant, or any of his predecessors, or any Colatery Rajah, was a party in the suit wherein that decree was passed, though at the same time it is manifest that the appellant's particular family property was considered in it, and that some of the family appeared in person or by proxy can hardly admit of a doubt; yet, as at the period of passing that decree the appellant had not attained the rank of Colatery Rajah, and as his family koulghum had been adjudged to participate in the Puttenrunda allowance to their satisfaction, so as to preclude an appeal from such decision, the Court are of opinion that the decree aforesaid forms no bar to the institution of a suit for the consideration of the appellant's claims in his present rank, and that it cannot be regarded as having determined the rights appertaining to the dignity of the Colatery Rajah. The Court are further of opinion that the appellant has shewn good and sufficient cause for not presenting his claim within twelve years from the date of action arising from the peculiar circumstance of the Colatery Rajah's general residence in Travancore on succeeding to that rank, and the difficulty of obtaining permission to visit the province of Malabar.

It is clear, as observed in the decree of the Provincial Court, that no person disputes the right of the appellant to the designation of the Colatery Rajah; and the Court of Sudr Udalut do not doubt that in ancient times and in the zenith of their power the Colatery Rajahs, either actually or ostensibly by deputies, enjoyed all the rights of sovereignty over the territories then subject to the rule of themselves and of their subordinate Rajahs; but it is justly observed by the Provincial Court that "the antiquated claims of the plaintiff "no longer exist, they having been abrogated by "the conquest of the whole of Malabar by Hyder; "and the cession of it to the Company by his son "Tippoo." And these facts of conquest and cession are indisputably proved by the record. Although the first respondent has not proved the fact of the remnant of the ancient kingdom of Colutnaad having been assigned to his ancestor by a deed in 1737-8, yet it is established that, at the period of a war breakng out with Tippoo Sultan in the year 1790, his ancestor was the reigning Rajah of Cherikal, and to whom Mr. Taylor, the English Resident at Tellicherry, on 2nd Midom 965, or 12th April 1790, addressed the communication in document B of the respondent's exhibits, proposing to afford him assistance in that war. Other documents demonstrate that the kingdom of Cherikal was ceded to the English by Tippoo on 18th March 1792, which proves that the contracting parties considered the rights of any third power in respect to sovereignty to have been abrogated and determined. These documents further explain that the predecessor of the first respondent was negociated with upon his own account for the revenue administration of the above kingdom until the termination of the Malabar year 974, or about 12th September 1799, when it was taken under the immediate government of the Company. Under these explanatory circumstances, the Court of Sudr Udalut are of opinion that previous to the period of the English acquisition of the province of Malabar, the ancient sovereignty of Colutnaad, subject to the rule of the Colatery Rajahs, had ceased to exist as a kingdom, and all emoluments and immunities connected therewith were extinguished with the dissolution of the kingdom; and the Court consider that, in consequence of the friendly alliance entered into by the first respondent's predecessor in the war alluded to, the English Government, on their accession to the sovereignty of the province of Malabar, in token of amity and humanity, conferred upon him in fief the territory he reigned over at the period of the alliance, and which has been latterly assumed under the government of the Company, giving to him in exchange the Puttenrunda or Malikana allowance, being two-tenths of the net revenues of the territory.

The Court of Sudr Udalut do, therefore, hereby confirm so much of the judgment of the Provincial Court for the Western Division as dismisses the claim with full costs, but on different grounds as afore stated. And the appellant is hereby further adjudged to pay all costs of appeal.

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OFFICIAL PAPERS.

Extension of South-West Railway to the foot of the Hills.

Proceedings of the Madras Government, Revenue Department.

Dated 16th July 1870, No. 1097.

As the extension of the South-West Railway from Poothanoor to the foot of the Hills has been determined upon, the Right Honourable the Governor in Council resolves to direct the Conservator of Forests to report fully on the sources from whence a sufficiency of fuel can be drawn to meet its requirements and the arrangements necessary to ensure a sufficiency for the future, both for the railway and the people. The expediency of floating down wood from the Hills for the use of the railway might be considered and reported on.

2. It will be necessary to clear a certain portion of the country on each side of the line between Mettapolliem and the foot of the Hills in order to keep off fever. This might be done by the Forest Department or by giving clearance leases.

3. If the stations are determined, or the intended sites are sufficiently known, the Consulting Engineer should at once communicate with the Collector of Coimbatore, in order that no land in the vicinity may be given on puttahs.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

Enfranchizement of Village Inams in Godavery District.

Proceedings of the Madras Government, Revenue Department, 10th August 1870.

Read the following Proceedings of the Board of Revenue, dated 9th July 1870:—

Read Government Order, 29th June 1870, No. 963.

Resolved that the foregoing Order of Government be communicated to the Collector of the Godavery District.

2. In paragraph 9 Government sanction the introduction of the revised scheme of village establishments in the Godavery District from the commencement of the coming Fusly year, that is, from the 1st July 1870.

3. As a necessary preliminary funds should be provided. A portion of the funds has been provided by proclaiming the introduction of the Village Cess Act. But another portion, namely, that which is to be created by the enfranchizement of the village service inams, cannot be realized until after the actual issue of title deeds to the holders of those inams.

4. There are probably not much below 10,000 service inams to be enfranchized, and about as many title deeds to be issued. The registers prepared by the Deputy Collectors of the late Inam Commission will be of little use, the old indefinite areas, and still more indefinite assessments, having been therein adopted. The registers will, therefore, have to be drawn up *de novo* with survey areas and survey assessments of the inams, and the quit-rents in each case at five-eighths must be calculated. Another important delicate operation will have to be gone through in the course of this fresh registration. The excess areas detected by the survey in each case will have to be noted and fully assessed under the rules. This process, if done carefully, is sure to add considerably to the assets of the village service fund. Title deeds for each case of inam thus settled will then have to be prepared and forwarded to the Inam Department at the Board of Revenue for the purpose of being sealed and signed. On their being returned to the district and delivered to the several holders of inams to whom they are addressed, the collection of the quit-rents will commence.

5. The enfranchizement of the service inams is thus a work of considerable magnitude and detail, and will throw much additional labour on the Taluk and Hoozoor establishment of the Collector. The Board, therefore, are not sanguine that this work can be undertaken by the Collector without his being provided with a temporary additional establishment, and even then they are not certain that the progress of the work can be so efficiently superintended by his ordinary establishment as to ensure the enfranchizement being carried out in time to admit of the collection of the quit-rents within the present fusly.

6. If the revised scheme of village establishments must come into force from this fusly, as it is very desirable that it should, the realization of this object can, it occurs to the Board, be ensured by entrusting the work to the hands of a special officer, trained to, and quite familiar with, it.

7. The Board learn from the 2nd Member in charge of the Inam Department that P. Chentsal Row, the late Special Assistant and now Treasury Deputy Collector of the Chingleput District, could, if deputed to the work, accomplish it thoroughly before the month of November or before the first rents fall due. Chentsal Row, though now on leave, is willing to undertake this duty at once. His employment would involve no additional expense to the State, save probably a trifling sum in the way of travelling charges and batta, which could be met from general savings under that head in the Revenue Budget.

8. The cost of extra establishments will probably not exceed Rupees 4,000 at the outside, which sum can also be met from general savings in the Revenue Budget; or, if there arises any difficulty in thus meeting it, it may be met by a loan from the large surplus of the Village Service Fund of Kurnool, to be re-paid out of the surplus of the Village Service Fund of the Godavery District at the end of the fusly.

9. If this proposal of employing a special officer is immediately sanctioned, there are many facilities offered for the speedy progress and completion of the work, by its being undertaken in the earlier months of the fusly, when the work in taluk cutcherries is usually less heavy and the village officers less engaged in collection or jummahbundy work, and when consequently the former will be able to give their utmost assistance, and the latter to attend without detriment to their revenue duties.

10. The Collector will observe, from the concluding paragraph of the Order of Government, that about Rupees 3,000, being the inefficient portion of the assets accruing from the village cess, must be deducted from the general *avail-*

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able assets, or, in other words, as explained further on in the Government Order, the sum of Rupees 3,000, which is the excess of cess in certain villages over and above the amount required for those villages according to scale, must be re-distributed over, and absorbed by, those villages. This can be done in two ways, either by increasing the salaries or the *numbers* of the village servants in the villages concerned. The Collector is requested to submit proposals on this head.

11. The Collector will, on receipt of these Proceedings, take the necessary steps for the preparation of an accurate and complete register of all village service inams, exhibiting the registered extent as well as the survey areas and the revised assessment determined by the Revenue Settlement Department. With a view to secure uniformity, the form of enfranchizement register, herewith forwarded, may be adopted throughout the district.

Order thereon, 10th August 1870, No. 1200.

Under the circumstances reported in paragraphs 4 to 9 of the foregoing Proceedings, the Government resolve to sanction the temporary employment of Deputy Collector Chentsal Row, with a small establisment, for the purpose of enfranchizing the existing village service inams in the Godavery District. Chentsal Row's services will accordingly be placed at the disposal of the Collector of the district for this special work, and the estimated expenditure on account thereof will be met from savings in the Revenue Budget.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

PLANTATIONS FOR THE USE OF RAILWAYS.

Proceedings of the Madras Government, Revenue Department.

Dated 19*th August* 1870, *No.* 1299.

With advertence to paragraph 20 of the Government Order under date 28th July 1870, No. 1,124, the Right Honourable the Governor in Council is pleased to direct that Mr. Walker shall, in the first instance, turn his attention to that portion of the country through which the Great Southern of India line of railway will pass, which is situated between Palamcottah and Madura. It is believed that it will be found that in this locality there is little or no natural jungle so situated in regard to the projected line as to be suitable for reserves, and it will consequently be necessary to designate sites for plantation. Probably the wants of the line for about twenty-five miles south of Madura may be met from the natural forests of that district, so that about six square miles of plantation will be needed for the remaining distance of about seventy-five miles. These plantations should be formed on waste or occupied land, (the latter being purchased for the purpose where absolutely necessary), and should in no case be situated more than ten miles from the line of railway. Similarly, if any jungle land suitable for the formation of reserves should be found to be available, the reserve must in no case be situated more than fifteen miles from the line.

2. The sites for these plantations having been chosen, Mr. Walker will then proceed to select suitable reserves of natural jungle between Madura and Trichinopoly, as directed in paragraph 20 of the Government Order under date 28th July 1870.

3. For the wants of the existing line of railway between Erode and Negapatam, Mr. Walker will be authorized to take charge of the plantations of casuarina, which are believed to be now under the care of the Collector of Tanjore, in the neighbourhood of Negapatam. If found to be suitably situated and to be likely to be successful, these plantations may be considerably extended, and it is possible that some portions of the Government forest land, situated between the line of railway and the Cauvery in the Coimbatore and Trichinopoly Districts, may be found on examination to be well adapted for the formation of reserves.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

CULTIVATION OF FOREIGN TOBACCO IN TANJORE.

Proceedings of the Madras Government, Revenue Department, 21*st October* 1870.

Read the following Proceedings of the Board of Revenue, dated 5th August 1870, No. 5181 :—

Read the following letter from the Acting Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Vallum, 13th April 1870, No. 126.

With reference to the Board's Proceedings, No. 1678, of the 11th ultimo, I have the honour to state that foreign tobacco will undoubtedly grow in this district. Mr. Whiteside has for some time been raising some from Ohio and Shiraz seed, and has supplied me with a memorandum (A.) on the experiment, which I enclose, together with two bundles (sent separately) of the cheroots from his first crop by banghy. They are sound; but, after all, are very like the ordinary Dindigul cheroots, with parhaps slightly more flavour. But it must be remembered that they are not a good sample, because the plants were allowed to grow up to their full height, and were exceedingly luxuriant in growth, some being 4 feet high with leaves 1½ feet long, and in flower and seed, the result of which gives a much coarser tobacco than when the plants are kept small and the leaves picked when smaller and younger.

2. I also enclose a memorandum from Dr. Ross (B.). who, by putting down the seed in the very hot weather, managed to get something considerably worse than the country variety; but then, as he says, it shows that the plant will grow under unfavourable circumstances.

3. On the whole, I have no doubt that Havannah tobacco will grow in this country just as it will in Germany; but it does not by any means follow that the result will be Havannah cigars any more than there. It may give a slight improvement on the country variety; but it is exceedingly doubtful whether this would find a market in England. This can only be proved by actual experiment, and the best plan, therefore, undoubtedly is, as mentioned in paragraph 3 of the Proceedings of the Agri-Horticultural Society circulated, to

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try foreign seeds of this kind on a large scale, and under various circumstances with regard to time of sowing, mode of culture, soil and manure, amount of irrigation, &c., &c., at the gardens in Madras; and then, when a fair estimate can be made as to the actual market value of the crop in England and prices that merchants are actually willing to pay, the culture can be confidently recommended to the natives. But they have no taste for *experimenting*, and I think it may be a mistake to invite them to attempt it until the possibility of success has been fully demonstrated elsewhere, since a failure, through ignorance or mistake, might seriously endanger or retard the introduction of what might otherwise be successful. I should like, however, a small quantity of the Havannah and Manilla seed for distribution to a few who may be expected to give it a fair trial.

4. I may add, for the information of others who are making trials, that the cultivation requires a certain amount of care when the plants are young, as the soil must just be kept moist and nothing more. Mr. Whiteside tells me that covering over the young plants with tatties and cocoanut leaves, and watering them so that the moisture may gradually drip through, is a very successful plan. The soil also should be decidedly rich and superior to the usual class of dry lands. Ants are also very fond of the seed, so that it ought to be sown in boxes or pots raised from the ground.

ENCLOSURE No. 1.

A.

Extract of Memorandum from W. S. Whiteside, Esq., C. S.

In the latter part of 1866 Mr. J. D. Sim gave me a few small packets of Ohio and Shiraz tobacco seed, of which I distributed some to ryots in South Arcot (with what result I never heard), and some I planted in my own garden at Cuddalore. It grew luxuriantly, and the crop was approaching maturity, when I was unexpectedly ordered to act as Collector in South Canara. I went, and never returned to Cuddalore. My servants gathered the tobacco, and reported that it was very fine; but, as I did not see any of them for some eight or nine months, the tobacco had all been smoked; at any rate, I never got any of it. I did not know I had any of the seed left till after I came here in September 1868, when unpacking a box I came upon four packets, two of each kind. I fancied the seed must be quite spoilt by that time, but resolved to give it a trial. I gave two of the packets to Dr. Ross, the Zillah Surgeon here, and two I planted myself. To my surprize, every seed came up. I did not plant the seed till the beginning of January 1869, if I recollect right; at any rate, I put it into the ground much too late. It grew magnificently, some of the plants being more than four feet high, with very large leaves; but I left Tanjore, when my Court closed in April for the recess, before the tobacco was fit to cut. I left very strict orders about it this time, and my servants gathered it carefully and stored it in a dark dry place till I came back. I then sent into Trichinopoly for one of the most skilful cheroot makers, and he came over and pronounced the tobacco to be first rate. The only misfortune was that the two kinds of tobacco leaves had been stupidly mixed by the gardeners when they were drying them. The cheroot maker made up the tobacco for use, and, putting aside all the inferior leaves, I had enough to put together 1,000 cheroots. These were made up last October. Several persons who have tried them declare them to be capital, not by any means strong in flavour, and only wanting keeping to be first rate. I let a good many of the plants run to seed, and the people here who grow tobacco told me that the leaves gathered from such plants make an inferior description of cheroots; so very probably these of mine might have been much better if more care had been observed in gathering the leaves, keeping the two kinds separate, and so forth. I gave a quantity of the seed to Mr. Breeks to distribute amongst the Badagas on the Hills, and I have still a little left. I planted some of it in September last year, and reared a very decent little crop. This time I tried to carry out the system observed by the Telugu tobacco growers in the Rajahmundry and Godavery Districts, and for which purpose I got a paper of instructions prepared for me by a native up there; but I am inclined to think that the tobacco of this second crop has not been quite of such fine quality as on the former occasion, and the sun seemed to affect it. I noticed that those plants which were screened from the hot afternoon sun grew very luxuriantly and to a great height, while those that were exposed to the sun all day were almost dwarfed. Whether this had anything to do with the seed used I do not know. I am now collecting the seed and have gathered a tolerable quantity of each kind, and I have a good quantity of leaves, too, now drying. But this year I have purposely allowed the whole crop to go to seed, as I want to get enough to try an experiment on a more extensive scale next cold weather.

(Signed) W. S. WHITESIDE.

ENCLOSURE No. 2.

B.

Extract of Memorandum from J. Ross, Esq., M. B.

Early last year Mr. Whiteside was good enough to give me two small packets of seed, one of Ohio, the other of Shiraz tobacco. In March, I think, I sowed these seeds in boxes filled with a moderately rich mould. Though the seed was sown rather thickly, I was not prepared for the very thick crop of seedlings which came up. Many of these, however, soon died down simply from overcrowding, and the survivors, having more space, throve luxuriantly. In due course they were transplanted into ordinary garden soil, without any special preparation, in rows about 18 inches apart, and, when I left this for the Hills in the end of April, every plant was doing well. Some weeks before my return, that is, about the beginning of July, the plants being pronounced ready by a man, who was supposed to understand this part of the process, were cut a few inches from the ground, and then followed the usual process of curing.

2. On my return I found that the cut stumps had sent forth vigorous shoots, which ultimately attained to the height of 18 inches or 2 feet. From a few plants which had not been cut I obtained an

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abundant supply of seed, and this seed was sown about the beginning of last north-east monsoon. It germinated just as freely as the original seed had done, but, owing to want of space and the rather unsatisfactory results of my first crop as regards cheroots, I planted out very few of the seedlings.

3. The past season, in my garden at least, has been very unfavourable in one respect. Everything suffered severely from the ravages of various species of caterpillars and flies, and my tobacco was no exception. Over and over again every leaflet was stripped to the midrib; then young shoots came up to be eaten in their turn, and yet, in spite of all this, so vigorous and full of life were the plants, that in the end they triumphed and shot up to the height of two feet and over; but the effect of this prolonged struggle for existence was to dwarf the leaves, particularly those at the base, and to make them coarse, tough, and fibry.

4. The plants, however, flowered and seeded freely, and I have now a small supply of this seed. What with my absence the first year and the ravages of insects this last season, I am unable to offer any comparison between the two kinds. Ohio and Shiraz, both, so far as I can now judge, did equally well.

5. I have already alluded to the results of my first year's experiment as regards the cheroots made from the tobacco. I got a man trained to the work from Trichinopoly to manufacture them; but, on examination, he pooh-poohed the tobacco as worthless, and it required considerable persuasion to make him set to work.

6. For obvious reasons I persisted and watched him carefully while making up 1,000. He said they would smoke badly, show a black ash, and be deficient in flavour. So far as I have tried them, and that, you may suppose, has not been to a great extent, they have fulfilled his prediction in every point. But then he said the bad quality was due to the seed having been sown at a wrong season; to the plants not having been carefully tended; and to the leaves not having been properly cured. And in this matter also he is, so far as I know, perfectly right. You will see, then, from this, what my experiment amounts to. It proves that these two kinds of seeds will grow and thrive vigorously under every disadvantage, for could anything be more trying than the hot season in one case and swarms of insects in the other? And there is nothing in the experiment to show that, under proper conditions and with due care, the tobacco may not ultimately be found equal, if not superior, to any of the native kinds.

7. I shall feel obliged by a small supply of the seeds you mention, more particularly if you can give me any practical directions as to the mode of cultivation, &c.

(Signed) J. ROSS, M. B.

Submitted for the information of Government, together with a copy of the Proceedings of the Board, dated 11th March 1870, No. 1,678.

2. The Board considered it right to consult the Superintendent of the Government Farm on the subject of the cultivation of tobacco, as they learned that he had turned his attention to the matter in connextion with proposals to introduce the cultivation of tobacco in Ireland. He has favoured them with a memorandum in which he expresses his opinion that "the questions to be "investigated are as yet more physiological than "agricultural. As agriculturalists, we can with "ordinary skill grow large crops of tobacco; but "we cannot be so sure *that the manufactured "article will possess a value equal to the cost of its "production.* It has been ascertained by analysis "that the best tobaccos contain very little albumen "and nicotine, while the bad-smelling and bad-"tasted tobaccos contain a large quantity of both; "thus, Maryland and Havannah tobaccos contain "scarcely two per cent. of nicotine, while French "and German tobaccos contain as much as eight "per cent. The question to be determined is, how "to grow *good* tobacco, rather than how to grow "tobacco? The investigations to be made are too "minute for any but those who have been used to "such investigations; it would be perfectly use-"less to turn them over to any other class of men. "The experiments had better be conducted by the "Committee of the Society themselves, under the "advice of an Analytical Chemist, versed in "organic chemistry; indeed, such a Chemist as "Mr. Broughton, in whose special line the inves-"tigation appears to lie."

3. The Board have taken an opportunity of consulting Mr. Broughton on the subject demi-officially, and his opinion is strongly corroborative of Mr. Robertson's. He points out that the cultivation of tobacco is a scientific pursuit in France under the management of a Chemical Director, and further kindly expresses his willingness to undertake the requisite analysis and experiments here if the Government will authorize him to do so.

4. The Board attach much importance to the whole question; but consider it obvious that scientific analysis and carefully managed experiments must precede any further attempts to improve tobacco, and accordingly request Government to place Mr. Broughton in communication with the Farm Committee and Mr. Robertson with this view.

5. The Board would then procure a carefully prepared sample of the best indigenous tobacco for analysis by Mr. Broughton, and would request the Superintendent of the Farm to undertake experiments in the cultivation of indigenous and exotic kinds in communication with him, in order that he may have an opportunity of testing the produce raised under different conditions of cultivation and cut at different stages of its growth, so as to secure a thorough examination of the whole subject.

Order thereon, 21st October 1870, No. 1,606.

The Proceedings of the Board are approved. The Board should forward samples of the best indigenous tobacco, which can be procured, to Mr. Broughton for chemical analysis, and that gentleman will be requested to undertake the required experiment.

2. The experimental culture of tobacco at the Government Farm should be commenced as proposed, and the Government will receive with interest an account of the result attained.

(True Extract.)

(Signed) R A. DALYELL,

Acting Secretary to Government

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Refund on old Stamps.

Proceedings of the Madras Government, Revenue Department, 28th October 1870.

Read the following letter from the Acting Secretary to the Board of Revenue, to the Acting Secretary to Government, Revenue Department, dated Madras, 5th September 1870, No. 5595:—

I am directed to acknowledge the receipt of Government Order, dated 16th August 1870, No. 1276.

2. Section 45 of Act XVIII of 1869 sufficiently provides for the renewal or refund of the value of stamps previously purchased and rendered useless by the changes it introduced, inasmuch as it provides for renewal or refund if the person possessing the stamp *does not require the same for use.*

3. In accordance with this section most stamps rendered useless by the new Act and held by private persons have already been returned to the treasuries, so that any rules which may be made now will have but a limited application.

4. The suggestion of the Government of India that applications for the renewal of these stamps should not be stamped under the Court Fees' Act may be embodied in the following notice:—

Notice.

Collectors will receive *verbal* applications for the renewal or the refund of the value of stamps purchased previous to the 1st January 1870 and rendered unfit for the purpose for which they were procured by that Act. If it is determined to grant the renewal or refund, the officer will record the fact under his signature in a book which will be kept for the purpose. Such applications need not be made in writing and stamped under the Court Fees' Act.

Order thereon, 28th October 1870, No. 1664.

The Government approve of the form of notice proposed for publication by the Board, and direct that it be printed in all District Gazettes.

(True Extract)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

Shiraz Tobacco raised in Tanjore District.

Proceedings of the Madras Government, Revenue Department, 11th November 1870.

Read the following Proceedings of the Board of Revenue, dated 25th October 1870, No. 6308:—

Read the following letters:—

From the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Negapatam, 19th August 1869, No. 178.

From their Proceedings, dated 28th August 1868, No. 5134, the Board are aware that the two experiments made in this district with the Shiraz tobacco seed entirely failed. The Board were good enough to send me some seed for a third time. This was entrusted to Anantaramier, Deputy Tahsildar and Sub-Magistrate of Trivady Division, and at present Acting Tahsildar of Combaconum.

2. This officer sowed the seed on 1st December 1868, in earthern pots, under his own personal supervision, and, though all of it germinated, only forty plants survived. From the fact of all the plants, with the exception of the above, having died, it is believed that the seed must have been more than one season old. In forty-five days the abovesaid forty plants attained a height of four inches, and bore each four or five leaves. The indigenous tobacco takes only thirty days to arrive at this stage. These seedlings were transplanted in two plots of three-fourths of a guli, each in two different villages. At first these plants were watered daily, and afterwards once in three or four days. In one of the plots the crop was cut in the end of February, and, in the other, on the 10th March 1869, the outturn being 1 lb. 2 oz. and 1 lb. 1 oz. respectively. The largest number of leaves to one plant was eight, and the smallest four. Both the cultivation and the preparation of the tobacco was conducted according to the method observed in the case of the indigenous kind. I forward* ten tolas of this tobacco for the inspection of the Board. I am not myself a sufficient judge of tobacco to know whether this is particularly good or the contrary.

* In a separate packet.

Enclosure No. 1.—Sample of Tobacco.

From the same officer, dated Vallam, 19th September 1870, No. 309.

I have the honour, with reference to the Board's Proceedings, dated 5th August 1870, No. 5181, to forward thirty tolas* of tobacco raised by Anantaramier, Tahsildar of Sheally, from the acclimatized seed of Shiraz tobacco, received from the Board about two years ago. If the Board find that it is good and that its cultivation should be extended, I shall take measures accordingly. Anantaramier suggests that it would be as well to ascertain whether this kind of tobacco will find a ready market in England. There are about 1,250 lbs. of tobacco still in hand, which I can also forward if the Board want it. The seed was put in about 230 gulies of land and yielded 1,290 lbs. The ordinary country variety cultivated in the same extent of land gives 1,500 lbs. of tobacco.

* Sent separately.

Enclosure No. 1.—Sample of Tobacco.

The Government Quinologist will be requested to favour the Board with his opinion of this tobacco on analysis, and also of the Shiraz tobacco received from the Collector with his letter, No. 178, of 19th August 1869.

2. The Collector should take care to preserve the seed. He might have a few cheroots made up carefully in Trichinopoly and send them to the Board for trial.

Order thereon, 11th November 1870, No. 1748.

Ordered to be recorded.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

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Attestation of Powers of Attorney by Magistrates.

Read the following Proceedings of the Government of India:—

Read the following letter from the Officiating Secretary to the Government of India, Financial Department (Separate Revenue—Stamps), to the Under-Secretary to the Government of the Punjab, dated Simla, 29th October 1870, No. 4445.

In reply to your No. 880, dated 21st September 1870, I am directed to remark that attestations of Powers of Attorney and such like documents made by Deputy Commissioners are made by them not as Notaries Public but merely as Magistrates or Judges.

2. The law does not require these officers to make such attestations, nor attach any peculiar efficacy to them, as compared with attestations by private witnesses. But, if such attestations are desired, there can be no objection to their being made, or to the levy, under executive orders, of a fee for the service performed. The fee might be fixed at the rate hitherto in force, and there appears no objection to its realization by stamps. Any fees so levied should certainly be credited as Stamp revenue.

Order.—Ordered that copies of the foregoing letter be forwarded to the other local Governments, the local Administrations, the Comptroller-General of Accounts, the Accountants-General, and the Deputy Accountants-General, in independent charge.

(Signed) R. H. HOLLINGBERY,
Asst. Secy. to the Govt. of India.

Order thereon, 11th November 1870, No. 1752.

Communicated to the Board of Revenue.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

SEASON REPORT.

REMARKS ON THE SEASON.

Northern Section.—The rains all over this section were exceedingly good and plentiful.

Ganjam.—All the reservoirs in Ganjam received full supplies, and ryots were enabled to complete the transplantation of *paddy*. Standing crops were in good condition. *Gingelly*, early *paddy* and *raggy*, were cut; but the yield of the two former was not quite satisfactory, owing to the absence of timely rains.

Vizagapatam.—In Vizagapatam the transplantation of *paddy* and the harvesting of *cumboo*, *korralu*, *gingelly*, *ooddooloo*, and *raggy*, were brought to a close.

Godavery.—The Godavery and Yeleru rivers were in fresh, anicut channels were in full flow, and tanks held abundant supplies. Transplantation of *paddy* under the last source of irrigation was fast progressing, and elsewhere had been completed. The rains proved exceedingly beneficial to the standing crops, and all of them were in a flourishing condition. The cultivation of *cotton*, *tobacco*, *chillies*, and some of the dry grains was progressing.

Kistna.—In parts of the Kistna District the heavy rains impeded the tillage of fields which had been reserved for sowing the later grains, and proved detrimental to the standing wet and *pedda jonna* crops. The transplantation of wet crops had considerably advanced in the Delta taluks, and some attention was bestowed on the cultivation of *cotton* and *castor-oil seeds*. The early crops, *sujja*, *mokka-jonna*, *gidda-jonna*, and *korra*, were being harvested.

Nellore.—*Iswara korra* and some of the dry grains were generally cultivated in Nellore. The standing crops were thriving. *Karu kesari*, *sujja*, *gingelly seed*, *indigo*, and *korra* were cut throughout the ditrict.

Prices were almost stationary in Ganjam, Godavery, and Nellore. They fell slightly in Vizagapatam and Kistna.

There was no cholera in Vizagapatam. Its prevalence in the other districts was very limited. Fever and small-pox were in existence; but, except in the Kistna and Nellore Districts, were not attended with any serious mortality.

Cattle slightly suffered from disease, except in Vizagapatam. Pasture was abundant everywhere.

Ceded Districts.—The rainfall was general in Cuddapah, and abundant in Kurnool.

In Bellary it was both partial and scanty.

Cuddapah.—Some of the tanks in this district received good supplies. Dry grains and *paddy* were largely cultivated, and the standing crops, except in Royachoty, where blight had slightly injured them, were in good condition. *Chennangy paddy*, *indigo*, and a few dry grains were harvested, and the outturn was about three-fourths of a full yield.

Bellary.—The Toombadra river, in Bellary, was reported to be in fresh; tanks, however, received only scanty supplies. *Horse gram*, *cotton*, *korra*, &c., were planted, and the early *cholum* and *kartick paddy* crops were harvested.

Kurnool.—Tanks, except in the Markapur Taluk of the Kurnool District, received full supplies. The usual dry grains and *paddy* were cultivated, and, in the taluks of Koilkuntla and Sirwell, *korra* and *sujja* were harvested.

The prices of staple grains were declining in Cuddapah. In Bellary and Kurnool they remained almost stationary.

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There was no cholera in this section, and the slight prevalence of fever and small-pox was confined to parts of Cuddapah and Kurnool.

Cattle disease was in existence; but its spread was partially checked by the adoption of Dr. Thacker's treatment.

East Centre.—The rainfall was general in Chingleput and South Arcot, and partial in North Arcot.

Chingleput.—In Chingleput, *paddy* of different kinds, and *cumboo, varagoo,* and *cholum* were cultivated. The standing crops in parts of the Trivellore Taluk were submerged by the heavy rains and completely destroyed; elsewhere they were in good condition.

North Arcot.—Tanks generally received good supplies. *Paddy, ground-nuts, chillies,* and some of the dry grains were sown. The standing crops were doing as well as could be desired. *Sajjaloo, raggy, gingelly, cholum,* and *paddy* were harvested, and yielded fair average crops.

South Arcot.—The largest supplies received by river-fed tanks would last for four months, and those received by rain-fed tanks would last for two months. The cultivation of *samba paddy* and the dry grains was in active progress, and the *carr* crop, *cumboo, raggy, indigo,* and *gingelly-oil seeds* were being harvested.

There was a perceptible fall in the prices in Chingleput and North Arcot. In South Arcot they were fluctuating.

There were twenty-eight deaths from cholera, and six from fever and ague in North Arcot.

Chingleput and South Arcot were not quite free from these diseases; but, on the whole, preserved good health.

More than 300 head of cattle died from disease in North Arcot, and the state of their health in the other districts also was far from good.

Cauvery.—Rains during the latter half of the month were scanty, and particularly so in the Tanjore District.

Tanjore.—Over the greater portion of the Tanjore District the cultivation of *samba peshanam* and the dry grains was vigorously pushed on. The standing crops, however, were drooping in some localities, owing to the inadequate rainfall. *Kaduppu kar, kuruvai,* and other inferior sorts of *paddy,* and the dry grains, *cumboo, cholum, &c.,* were being harvested.

Trichinopoly.—In Trichinopoly, irrigating channels were full, and tanks held moderate supplies. The same grains as in Tanjore were under cultivation. *Kar* and *samba paddy, cumboo,* and *raggy* were being harvested. The condition of the standing crops was good.

Prices fell, and there were indications of a further fall in Tanjore.

Public health was, on the whole, good.

Cattle were free from disease.

Southern Section.—There was but a scanty fall of rain in this section.

Madura.—The transplantation of *paddy* and the cultivation of *raggy, cumboo,* and other cereals were progressing. The early *cumboo, gingelly-oil seed,* and *raggy* crops were being harvested. *Cotton* and *indigo* plants were thriving.

Tinnevelly.—The usual freshes were received in the Tambrapurni river. *Peshanam,* or second-crop cultivation under rain-fed tanks, was progressing, and wet lands in other localities were being ploughed. *Cumboo, samai,* and *raggy* were sown on dry lands.

Prices were stationary.

Cholera was abating and public health was good.

Cattle were healthy, though pasture was not sufficiently plentiful in parts of the Madura District.

West Centre.—The rainfall was slight in Coimbatore and tolerably good in Salem.

Coimbatore.—In Coimbatore ryots were engaged in the cultivation of *tobacco, cholum, horse gram,* and other grains. The standing *nunjah* and garden crops were thriving, but some of the dry crops had suffered from insufficiency of rain. *Rape seed, cumboo, &c.,* were harvested,

Neilgherries.—On the Neilgherries, *korally, samai, raggy, keeray, potatoes,* and *coffee* were in good condition. *Ganjay* and *wheat* had already been reaped.

Salem.—Tanks in Salem were well supplied. The progress made in wet and dry cultivation and the condition of the standing crops generally were satisfactory. *Indigo* was not largely cultivated, and only a small quantity of *cotton* was picked. *Car paddy* and the early dry crops were harvested.

There was a slight fall in the prices in Coimbatore and on the Neilgherries. In Salem they slightly fluctuated in the prospect of a demand for exportation.

In Coimbatore and Salem, fever and cholera were prevalent, and there were some casualties from the latter cause. The sanitary condition of the Neilgherries was good.

The health of cattle was, on the whole, good.

West.—The rainfall was deficient during the first half of the month in South Canara, but was made up for by the heavy showers during the latter half. In Malabar the fall was favourable.

South Canara.—The first-crop rice had been harvested, and preparations were being made for the cultivation of the second crop.

Malabar.— In Malabar the sowing of the second or *Magaram* crop was still in progress.

Prices fell in South Canara and remained stationary in Malabar.

Public health was slightly affected by cholera, fever, and small-pox.

Cattle were not free from disease in South Canara.

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Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency, for the Month of September 1870, *Fusly* 1280.

Section	Districts	Prices of Grain and Sea Salt. — 2nd sort Rice. Fusly 1279	2nd sort Rice. Fusly 1280	2nd sort Paddy. Fusly 1279	2nd sort Paddy. Fusly 1280	Cholum. Fusly 1279	Cholum. Fusly 1280	Raggy. Fusly 1279	Raggy. Fusly 1280	Horse Gram Fusly 1279	Horse Gram Fusly 1280	Sea Salt Fusly 1279	Sea Salt Fusly 1280	Rainfall. — Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam	326	273	131	110	191	156	161	135	262	197	282	316	12·50	8·40	9·20	10·50	10·15
	Vizagapatam	407	288	172	120	198	165	187	150	238	18[illegible]	280	312	8·40	10·70	14·10	11·10	11·07
	Godavery	293	235	136	106	160	130	156	124	219	168	250	266	13·78	10·99	11·54	10·42	11·68
	Kistna	367	330	163	146	181	192	165	160	261	197	291	346	11·70	7·30	9·60	8·20	9·20
	Nellore	362	310	174	147	155	202	138	160	245	219	262	314	9·24	4·59	10·77	2·38	6·74
Ceded Districts.	Cuddapah	418	409	192	184	189	202	173	176	213	229	317	364	......	......	......	......	......
	Bellary	363	343	148	158	118	239	100	143	156	190	378	479	2·74	2·87	2·13	1·79	2·38
	Kurnool	430	416	184	189	151	195	156	180	230	246	328	364	5·36	10·51	7·51	4·86	7·06
East Centre.	Madras	457	336	207	150	205	187	222	192	255	287	250	295	......	......	......	......	12·58
	Chingleput	468	363	219	162	283	230	236	197	304	255	267	299	6·68	4·45	7·21	5·75	6·02
	North Arcot	412	320	187	143	192	136	184	150	225	177	247	303	4·80	3·30	5·70	4·90	4·67
	South Arcot	444	291	202	126	232	140	223	126	257	183	278	330	4·72	2·47	2·57	4·15	3·47
Cauvery.	Tanjore	384	267	175	119	210	131	181	123	247	184	251	297	4·20	2·09	1·15	4·50	2·98
	Trichinopoly	400	300	190	137	198	136	195	128	238	168	292	321	5·00	4·45	2·70	3·95	4·02
Southern Section.	Madura	445	348	213	167	168	152	181	131	199	177	297	333	3·16	3·56	......	2·15	2·95
	Tinnevelly	451	421	209	194	227	226	213	197	229	236	287	353	1·93	2·40	0·71	1·20	1·56
West Centre.	Coimbatore	479	395	228	194	265	223	211	182	256	193	350	381	4·75	1·73	3·35	3·04	3·22
	Neilgherries	640	492	...	...	267	291	246	229	320	229	457	472	......	......	2·36	2·04	2·20
	Salem	406	306	179	187	201	146	177	122	202	140	302	348	6·08	10·72	7·71	7·44	7·99
West	South Canara	471	337	194	151	...	...	283	211	348	272	254	285	9·70	11·80	11·80	9·90	10·80
	Malabar	412	355	188	163	...	...	189	175	318	238	294	347	6·29	9·36	......	5·52	......

Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of September 1870, *Fusly* 1280.

	Districts	Cotton. Fusly 1279. Extent.	Cotton. Fusly 1279. Assessment.	Cotton. Fusly 1280. Extent.	Cotton. Fusly 1280. Assessment.	Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo. Fusly 1279. Extent.	Indigo. Fusly 1279. Assessment.	Indigo. Fusly 1280. Extent.	Indigo. Fusly 1280. Assessment.	Market rate of Cake Indigo per Maund of 25 lbs.
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	6,191	12,408	6,641	12,458	165	30	30	3	2	70
2	Vizagapatam...	8,594	14,224	4,316	10,368	144	317	1,507	2,518	18,890	46
3	Godavery ...	760	1,664	171	596	145	1,061	3,187	525	1,432	56
4	Kistna ...	81,797	1,21,013	39,707	49,921	119	14,341	26,510	31,081	55,069	42
5	Nellore ...	9,283	9,244	9,762	10,327	152	33,685	79,264	43,216	91,043	43
6	Cuddapah ...	37,532	54,257	27,181	31,319	100 to 160	9,620	25,284	8,736	23,429	40 to 56
7	Bellary ...	3,27,257	3,49,223	2,34,946	2,46,395	115	8,181	13,640	6,256	9,902	63
8	Kurnool ...	2,10,087	2,37,621	1,05,638	1,18,978	122	44,820	84,628	57,241	1,04,524	45
9	Madras ...	......	......	......	......	140	......	......	......	......	40
10	Chingleput ...	....	......	....	......	......	2,916	9,355	7,576	19,575	...
11	North Arcot ...	1,071	2,094	1,468	3,176	115	4,899	11,243	11,106	21,923	44
12	South Arcot ...	937	1,772	1,838	3,722	121	23,540	46,200	58,154	1,11,975	34
13	Tanjore ...	400	483	2,033	2,556	155	472	885	1,004	2,247	25
14	Trichinopoly ...	2,249	2,508	941	970	123	111	328	472	861	14
15	Madura ...	3,140	4,329	3,861	5,134	115	44	108	37	64	40
16	Tinnevelly ...	3,534	3,283	1,832	1,312	125	31	63	33	60	31
17	Coimbatore ...	46,623	40,508	57,161	48,589	124	......	......	......	......	30
18	Salem ...	7,577	10,806	6,518	9,582	192	1,282	6,071	1,663	9,644	52
	Total...	7,47,032	8,65,437	5,04,014	5,55,403	......	1,45,350	3,08,303	2,29,626	4,70,640	...

Revenue Board Office,
Madras, *22nd October* 1870.

(Signed) J. GROSE,
Acting Secretary.

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CIRCULAR ORDER OF THE BOARD OF REVENUE.

No. 6121.

CERTIFICATES OF SALE UNDER ACT II OF 1864 EXEMPT FROM STAMP DUTY.

Proceedings of the Board of Revenue, dated 14th October 1870.

Read the following letter from the Honourable D. ARBUTHNOTT, Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 13th September 1870, No. 260:—

With reference to the Board's Standing Order, No. 274-1, I have the honour to observe that Certificates of Sale, issued under Section 38 of Madras Act II of 1864, appear to me to be instruments falling under Exemption 15 in Section 15 of the General Stamp Act No. XVIII of 1869, and to request the instructions of the Board whether such certificates can be issued on unstamped paper.

The Board concur with the Collector.

2. These Proceedings will be communicated to all Collectors, and Circular Order No. 19 of 1868 (274-1) will be cancelled.

(Signed) J. GROSE,
Acting Secretary.

ACTS OF THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 19th day of July 1870, and is hereby promulgated for general information:—

ACT No. XXI OF 1870.

An Act to regulate the Wills of Hindoos, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

Preamble.

Whereas it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of the wills of Hindoos, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short Title.

1. This Act may be called, "The Hindoo Wills' Act, 1870."

Certain portions of Succession Act extended to wills of Hindoos, Jainas, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely, Sections 46, 48, 49, 50, 51, 55, and 57 to 77, (both inclusive),

Sections 82, 83, 85, 88 to 103, (both inclusive),

Sections 106 to 177, (both inclusive),

Sections 179 to 189, (both inclusive.

Sections 191 to 199, (both inclusive),

so much of Parts XXX and XXXI, as relates to grants of probate and letters of administration with the will annexed, and

Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed,

shall, notwithstanding anything contained in Section 331 of the said Act, apply—

Extent of Act.

(a.) to all wills and codicils made by any Hindoo, Jaina, Sikh, or Buddhist, on or after the 1st day of September 1870, within the said territories of the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b.) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situate within those territories or limits:

Provisos.

3. Provided that marriage shall not revoke any such will or codicil:

and that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for Section 2 of this Act, he could not deprive them by will:

and that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person, any property which such person could not have alienated *inter vivos:*

and that nothing herein contained shall affect any law of adoption or intestate succession:

and that nothing herein contained shall authorize any Hindoo, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before the 1st day of September 1870.

Partial repeal of Bengal Regulation V of 1799, Section 2.

4. On and from that day, Section 2 of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Mahomedans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Saving of rights of Administrator-General.

5. Nothing contained in this Act shall affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay respectively.

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6. In this Act, and in the said sections and Parts of the Indian Succession Act, all words defined in Section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said Section 3 has attached to such words respectively:

Interpretation clause.

and in applying Sections 62, 63, 92, 96, 98, 99, 100, 101, 102, 103, and 182 of the said Succession Act to wills and codicils made under this Act, the words "son," "sons," "child," and "children," shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son:

and in making grants under this Act of letters of administration with the will annexed, or with a copy of the will annexed, Section 195 of the said Succession Act shall be construed as if the words "and in case the Hindu Wills' Act had not been passed" were added thereto; and Section 198 of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindoo Wills' Act had not been passed" were inserted; and Sections 230 and 231 of the said Succession Act shall be construed as if the words "if the Hindu Wills' Act had not been passed" were added thereto, respectively.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl.

for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 30th August 1870, and is hereby promulgated for general information:—

Act No. XXII of 1870.

An Act to confirm certain laws affecting European British Subjects.

Whereas the Governors of the Presidencies of Fort St. George and Bombay in Council, and the Lieutenant-Governor of Bengal in Council, have severally passed divers Acts purporting to apply generally to all persons within the local extent of the said Acts; and whereas doubts have been raised as to the validity of such Acts, in so far as they affect to render European British subjects liable to be convicted and punished by tribunals other than the High Courts of Judicature at Fort William, Madras, and Bombay; and whereas doubts have also been raised as to the application to European British subjects of certain Acts of the Governor-General in Council: For the purpose of removing such doubts it is hereby enacted as follows:—

Preamble.

1. Every such Act passed by the Governor of the Presidency of Madras in Council, or by the Governor of the Presidency of Bombay in Council, or by the Lieutenant-Governor of Bengal in Council, shall, so far as regards the liability of European British subjects to be convicted and punished thereunder, be and be deemed to have been as valid as if it had been passed by the Governor-General of India in Council at a meeting for the purpose of making Laws and Regulations.

Confirmation of local Acts so far as regards European British subjects.

2. Unless there be something repugnant in the context, all Acts heretofore or hereafter passed by the Governor-General in Council, which confer summary jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Acts conferring summary jurisdiction over offences to apply to European British subjects.

3. Act No. XVIII of 1859 *(to amend the law relating to offences declared to be punishable on conviction before a Magistrate)* shall be construed as if, in Sections 1, 2, and 4, after the word "heretofore" the words "or hereafter" were

Amendment of Act No. XVIII. of 1859, Sections 1, 2, and 4.

4. Nothing in this Act shall be taken to authorize a Magistrate to exceed the limits of his ordinary jurisdiction as to the amount of punishment which he may inflict, or to confer jurisdiction on any Magistrate not being a Justice of the Peace.

Saving of limits of Magistrates ordinary jurisdiction.

5. All Magistrates and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been then in force, and no suit or other proceeding shall be maintained against any such Magistrate or other person in respect of anything so done.

Indemnity clause.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl.

for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

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